(16,123.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,

vs.

THE MINNESOTA RAILWAY TRANSFER COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption to transcript	1	1
Transcript from United States circuit court, district of Minnesota	2	1
Citation and admission of service	2	1
Petition for and order allowing appeal	3	2
Bond on appeal and stipulation in regard thereto	3	3
Stipulation as to the number of copies of record to be printed on appeal and order	5	4
Stipulation and order as to use of original exhibits on appeal	6	5
Stipulation that answer of Bridget Egan *et al.* alone shall be certified to appellate court	7	6
Amended bill of complaint	8	6
Answer of Bridget Egan *et al*	43	27
Replication	56	33

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 2, 1897.

	Original.	Print.
Testimony for complainants	57	33
Testimony of Elizabeth Wetzel	57	33
Alfred J. Fortin	94	54
Samuel Coleman	97	55
George W. F. Graff	101	58
Mary J. Remsen	105	60
Clara B. Remsen	136	76
John U. Hergesheimer	142	80
Thomas R. Crooks	155	87
John Wesley Remsen	158	89
Harriet A. Van Zandt	172	96
Theodore Stevens	184	103
Thomas W. Macclary	186	105
Elizabeth Wetzel (recalled)	190	107
Mrs. Emma F. Hergesheimer	212	119
C. Howard Guilbert	221	124
George L. Schaeffer	223	125
Wallace Fletcher	224	125
James L. Hines	224	126
James W. Hopkins	226	127
Mabel Remsen	239	134
Testimony for defendants	248	138
Testimony of John R. Tatum	248	138
Pennock Pusey	254	142
Hannah Tatum	261	146
Edwin B. Hay	262	146
Testimony for complainants	263	147
Testimony of George W. Remsen	263	147
Mrs. Maggie Beckman	268	150
Testimony for defendants	273	152
Testimony of Charles D. Gilfillan	273	152
Simeon P. Folsom	278	155
John B. Sanborn	282	157
D. M. Sullivan	285	159
J. L. Lovering	290	162
David C. Shepherd	302	168
James J. Hill	305	170
Charles H. Pratt	308	171
J. L. Lovering (recalled)	318	177
George M. Hazzard	318	177
J. B. Rossman	331	184
H. S. Fairchild	337	187
George L. Hendrickson	349	194
J. L. Lovering (recalled)	355	196
Stipulation as to certain facts known to Mr. W. C. Mayne in December, 1889	356	197
Stipulation as to certain facts	359	198
Complainants' exhibits	363	201
Certified copy of land warrant No. 28811, dated September 30, 1848	363	201
Assignment of warrant No 28811 by Elizabeth Remsen *et al.* to Nathan C. D. Taylor, October 11, 1848	365	202

	Original.	Print.
Order of orphans' court of Philadelphia county appointing Elizabeth Remsen guardian of Mary Ann Remsen	366	202
Acknowledgment of receipt by register and receiver at Stillwater land office of land warrant No. 28811, etc.	367	203
Notice of Nathan C. D. Taylor of location	367	203
Land warrant certificate No. 28811	368	203
Petition of William F. Small for appointment of guardian of Mary Ann Remsen *et al*	371	204
Defendants' exhibits	373	206
Order: cause heard in part	375	206
Order: cause further heard	375	207
Order: cause submitted	375	207
Opinion on final hearing	376	208
Notice of taxation of costs	384	215
Final decree	386	216
Assignment of errors	390	220
Clerk's certificate to transcript	391	221
Stipulation that answer of Bridget Egan *et al.* shall be used and considered as answer of all defendants, etc	392	222
Appearance of counsel for appellants	393	222
Stipulation for use of original exhibits on appeal	393	223
Appearance of William C. Mayne, counsel for appellants	394	223
Appearance of counsel for appellees	395	224
Order of submission	396	224
Opinion of United States circuit court of appeals	397	225
Decree	405	232
Petition for and order allowing appeal	406	232
Bond on appeal	407	233
Assignment of errors	410	235
Citation and admission of service	413	237
Stipulation as to original exhibits on appeal to Supreme Court	415	238
Clerk's certificate to transcript	416	238

1 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, 1894, of said court, begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in December, to wit, the third day of December, A. D. 1894, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn, and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the twenty-ninth day of June, A. D. 1894, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Minnesota, was filed in the clerk's office of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

2 United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Defendants.

UNITED STATES OF AMERICA, *ss:*

To the Minnesota Railway Transfer Company *et al.* and all of the defendants in the above-entitled suit:

You and each of you are hereby cited and admonished to be and appear at the United States circuit court of appeals for the eighth circuit, at the city of St. Louis in the State of Missouri, sixty (60) days from and after the day this bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States, third division, district of Minnesota, wherein Elizabeth Wetzel, Harriet A. Van Zant, Emma F. Hergesheimer, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen are appellants and you are respondents, to show cause, if any there be, why the decree entered in said cause on the 6th day of November, A. D. 1893, in which it was ordered, adjudged and decreed among other things that the complainants take nothing by this action, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. R. Nelson, judge of the United States circuit court for the district of Minnesota, this 3d day of May, A. D. 1894.

R. R. NELSON,
Judge of the Circuit Court.

Indorsed: Ent. 610 C. Eq. Original. United States circuit court, district of Minnesota, third division. Elizabeth Wetzel *et al. vs.* The Minnesota Railway Transfer Company *et al.* Citation. Due service of the within citation hereby admitted this 3d day of May, A. D. 1894. Davis, Kellogg & Severance, attorneys for respondents. Filed May 3, 1894. Oscar B. Hillis, clerk. Bramhall & Taylor, attorneys and counsellors, 52 Gilfillan building, St. Paul, Minn.

3 United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Defendants.

The above-named complainants, Elizabeth Wetzel, Harriet A. Van Zant, Emma F. Hergesheimer, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen and Mabel Remsen, conceiving themselves aggrieved by the final decree entered in said circuit court in the above-entitled action, on the 6th day of November, A. D. 1893, in and by which it was adjudged, ordered and decreed among other things that complainants take nothing by this action, do hereby appeal from said (decree*d*) to the United States circuit court of appeals for the eighth circuit, and said complainants file herewith an assignment of the errors intended to be urged by them on appeal and refer to said assignment of the errors as a part thereof, and said complainants pray that this their appeal may be allowed, and that a transcript of the record proceedings and evidence in this cause, duly authenticated, may be sent to said United States circuit court of appeals for the eighth circuit.

Dated May 3rd, A. D. 1894.

WILLIAM C. MAYNE,
LUSK, BUNN & HADLEY,
Complainants' Solicitors.
C. W. BUNN, *Of Counsel.*

Indorsed: Petition for allowance of appeal. And now, to wit, on May 3rd, A. D. 1894, it is hereby ordered that the appeal be allowed as prayed herein. R. R. Nelson, United States circuit judge. Filed May 3rd, 1894. Oscar B. Hillis, clerk.

United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Defendants.

Whereas, lately at the June, 1893, term of the circuit court
4 of the United States in and for the district of Minnesota, third division, in a suit pending in said court between said complainants as complainants, and the said defendants as defendants a decree was rendered against said complainants, in and by which it was ordered, adjudged and decreed, among other things, that said complainants take nothing by this action, and the said complainants having obtained an allowance of the said court of an appeal to reverse the decree in the aforesaid suit, and a citation directed to said defendants and each of them; citing and admonishing them and each of them to appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty (60) days from and after the date of said citation:

Now, therefore, the American Surety Company of New York for itself, its successors and assigns, does undertake, promises and agrees to and with said defendants, their successors and assigns, and their heirs, executors and administrators, that said complainants shall pay all costs and charges that may be awarded against them on such appeal, not exceeding the sum of fifteen hundred dollars ($15,000).

Now the condition of the above obligation is such that if the said complainants and appellants shall prosecute said appeal to effect and answer all damages and costs if they shall fail to make good their said appeal, then the above obligation to be void, otherwise to remain in full force and virtue.

In witness whereof the American Surety Company of New York has caused these presents to be signed by its resident vice-president and resident assistant secretary at Saint Paul, Minnesota, and its corporate seal to be hereunto affixed on the 2nd day of May, A. D. 1894.

THE AMERICAN SURETY COMPANY OF NEW YORK,
By JOSEPH LOCKEY, *Resident Vice-President.*
A. L. HOPPAUGH, *Resident Assistant Secretary.*

In presence of:

WM. H. FARNHAM.
E. E. SIMMONS.

[CORPORATE SEAL.]

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 2 day of May, A. D. 1894, before me personally appeared Joseph Lockey and A. L. Hoppaugh to me personally known,
5 who being duly sworn by me did each on his oath for himself say that he Joseph Lockey is the resident vice-president of the American Surety Company of New York, and he A. L. Hoppaugh is the assistant secretary of said American Surety Company of New York, a corporation; that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and said Joseph Lockey and A. L. Hoppaugh acknowledged said instrument to be the free act and deed of said corporation.

[NOTARIAL SEAL.] WM. H. FARNHAM,
Notary Public, Ramsey County, Minnesota.

It is hereby stipulated that the foregoing undertaking may be allowed and approved in the above-entitled cause upon the appeal thereof to the United States circuit court of appeals, as and in the place of a bond, and with the same force and effect as if the bond provided for in the rules of said circuit court of appeals, had been given in this action, upon such appeal.

Dated May 3d, 1894.

DAVIS, KELLOGG & SEVERANCE,
Attorneys for Defendants.

The foregoing undertaking with the surety thereon is hereby approved and allowed.

Dated May 3d, 1894. R. R. NELSON,
Circuit Judge.

Indorsed: Appeal undertaking. Filed May 3d, 1894. Oscar B. Hillis, clerk.

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL *et al.*, Complainants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et al.*, Defendants.

It is hereby stipulated by and between the parties to the above-entitled cause that the complainants upon their appeal from the final decree entered herein in the above-entitled court on November 6, 1893, to the United States circuit court of appeals for the eighth circuit, need not print and file with the clerk of the court for
6 use upon such appeal, only fifteen copies of the record herein, and that the court may make an order to this effect.

Dated May 3rd, A. D. 1894.

BUNN & HADLEY,
WM. C. MAYNE, *Solicitors for Complainants.*
DAVIS, KELLOGG & SEVERANCE,
Defendants' Attorneys.

Upon reading the foregoing stipulation, it is hereby ordered that the complainants, for the purposes of the appeal above mentioned, shall be required to print and file with the clerk of the court for the purpose of such appeal fifteen copies only of the record herein.

Dated May 3d, A. D. 1894.

WALTER H. SANBORN,
Circuit Judge.

Indorsed: Stipulation and order. Filed May 3, 1894. Oscar B. Hillis, clerk.

United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL *et al.*, Complainants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et al.*, Defendants.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, that the clerk of the above-entitled circuit court need not send to the appellate court a copy of any of the exhibits or any part thereof, introduced in evidence herein by either the complainants or defendants as a part of the record herein upon the appeal of the complainants herein from the decree of this court entered herein on November 6th, 1893, to the United States circuit court of appeals for the eighth circuit, but in place and in lieu of such copies the said clerk shall certify and send to said appellate court for use on such appeal, said original exhibits and all thereof, for use upon the hearing of said appeal, with the same force and effect as if copies thereof had been certified and returned to such appellate court by the clerk of this court as a part of the record on such appeal.

Dated May 3, 1894.

WM. C. MAYNE,
LUSK, BUNN & HADLEY,
Solicitors for Complainants.
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Defendants.

7 Upon reading the foregoing stipulation,

It is hereby ordered that the clerk of this court may comply with the foregoing stipulation, and the effect of his compliance therewith shall be as herein stipulated.

Dated May 8th, 1894.

WALTER H. SANBORN,
Circuit Judge.

Indorsed: Stipulation and order concerning exhibits. Filed May 12th, 1894. Oscar B. Hillis, clerk.

United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL *et al.*, Complainants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, that on the appeal taken by the complainants herein to the United States circuit court of appeals for the eighth circuit from the decree of this court entered herein on November 6, 1893, the clerk of this court as a part of the record on such appeal shall return to such appellate court the answer herein of Bridget Egan *et al.*, and none of the other answers interposed herein.

Dated May 10, 1894.

WM. C. MAYNE,
BUNN & HADLEY,
Solicitors for Complainants.
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Defendants.

Indorsed: Stipulation. Filed May 12th, 1894. Oscar B. Hillis, clerk.

8 In the Circuit Court of the United States for the District of Minnesota, Third District. In Equity.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA TRANSFER RAILWAY COMPANY, MAITLAND E. Graves, Lucia Clark, Florence Lucia Clark, Archie Guthrie Clark, Fred Morse Clark, Louisa E. White, William O. Winston, Fendall G. Winston, Philip B. Winston, David C. Shepard, Peter Siems, Frank P. Shepard, Alvin W. Krech, James F. Jackson, William Deering, Rufus C. Jefferson, Charles F. Backus, L. L. Bennett, George Wilson, Jr., Nels P. Fransen, James L. Lovering, Leonard W. French, Hiram Backus, Lilton E. Shields, William H. Cleary, John A. Cleary, George Strong, Emily R. Fisher, Frank H. McKelvey, Franklin C. Ford, George F. Copeland, Dora Marshall, Clinton Johnson, Leonard J. Dobner, Isabella Z. Kingsley, The Ramsey County Land & Loan Company, Henry S. Fair-
8½ child, Elizabeth Brophy, Edward Howard, Carrie L. Backus, Julia M. Callahan, Lewis H. Lipman, Mary C. Braden, Joseph A. Humphreys, Samuel M. Magoffin, Eleanor Tatum, Amy T. Hilles, Elizabeth T. Long, John Weber, William W. Bixby, Charles L. Walker, William H. Wright, Clarence E. Stone, Frank Crawshaw, Frank Greening, Desire H. Michaud, Josephine A. Huber, Lydia J. Andrew, Herbert M. Crosby, Clin-

ton J. Backus, Amanda E. Johnson, Charles A. Baker, Luther B. Little, George H. Bridgman, John B. Sanborn, Emma E. Chapman, Henry C. V. Hunderup, Benjamin W. Smith, Jed. L. Washburn, Maurice Tracy, Maurice C. Tracy, William H. Fuller, John B. Rossman, Sidney E. Bibbins, Charles E. Lingquist, Charles E. Lindquist, Harcourt Mott, Ola S. Johnson, N. B. Hogg, Jr., E. J. Fargo, John H. Moreland, Willis Danforth, James R. McKay, Kingsley H. Burrell, Caroline M. Burrell, Edith E. Thomas. John Luby, Samuel Strows, Mary C. Thaw, Emily H. Miller, Jennie A. Severn, Thomas W. Martin, Henry Bosse, Kate L. McDermott, John Johnson, Henry C. Babcock, George Lamb, Michael Towey, Charrie A. Morton, Dan. Baker, James C. Hening, Rachel H. Henning, Addie B. Mohler, Robert C. Wiley, Fannie W. Wiley, Tinsley V. Means, Ella B. Clark, Martin Johnson, Andrew G. Johnson, John Aronson, Henry L. Little, Hans Peterson, Owen Williams, Conrad Peters, Levi C. Emery, George R. Barrton, Charles F. Young, Mary Jane Ellison, Agnes A. Hamilton, W. J. O'Toole, M. E. Nelson, Frank A. Ackerman, Cybele B. Flower, Clara W. A. Blackman, Charles W. Heath, Nels Frederickson, Anson B. Baker, Anton Peterson, Robert K. Evans, Richard Evans, Jr., Richard Eavans, Jr., Joseph J. Vilsmeyer, Christian Bendixen, Charles P. Barstow, Mary C. Tatum, The St. Paul Congregational Union of Ramsey County, Minnesota; Marion
9 E. Martin, Mary Brosnahan, Bridget I. O'Leary, Annie M. O'Leary, Bridget Eagan, Mary Eagan, Maria C. Killiam, Thomas Helgesen, The State Bank of Minneapolis, Orin L. Benson, Frank W. Buswell, Lizzie J. Smith, Wallace W. Campbell, George G. Benz, Oliver J. Graham, Freeman J. Page, Erastus H. Murray, Emma G. Lockwood, Michael O'Neill, Sadie E. Martin, Luther B. Little, Thomas G. Harvey, M. P. Ryan, Augusta A. Garrison, James O. Roberts, Jacob A. Roberts, William G. Chapman, John A. Lindquist, Mary A. Crawshaw, William W. Holcomb, Anthony Schimansky, Edward B. Storer, Paul J. Lowell, Elise Hohneck, Lilly M. Brown, Hans Monson, Charles O. Moline, Emil Moline, John Larson, Lewis Larson, Carrie Larson, Annie Larson, Andrew Olson, John August Peterson, John H. Cunningham, Thomas A. Carlson, Klaus J. Larson, Prindle Partridge, Eli S. Montri, Laurits A. Larsen, Christopher Bendixen, William R. Murray, Frederick Bell, Carrie A. Morton, E. I. Hoyt, Mary Little, John Olson, August Olson, Albin Severson, Eleanora Langevin, Mary Eleanora Michaud, Emma Flanagan, Louis A. Langevin, Eugene A. Langevin, and Ida May Langevin, Sole Legatees and Heirs of Edward Langevin, Deceased; Nancy A. Danforth, Delaskie Danforth, Henry W. Danforth, and Charles A. Danforth, the Sole Heirs-at-law of Willis Danforth, Deceased; George Drew, J. E. Wells, and H. H. Goodrich, The St. Paul Trust Company, Mary H. Farquhar, Peter S. Roberts, Wm. H. Willsey, Hannah Austrian, The German-American Building Association, The Lombard Investment Company, Maria W. Curtis, William K. Richardson and Winslow Warren, Trustees under the Will of Henry Richardson, Deceased; William Brewster, Edward Motley, Maria A.

Gilbert, Charles H. Wagner, I. F. Johnson, Gardiner Green,
10 Jr., Executor of the Will of Rachel R. Wheeler, Deceased; W. B. Hopkins, The Savings Bank of St. Paul, J. W. Frederick, Alfred F. Cooley, Oramel A. Richardson, John W. Bookwalter, as James Leffel & Co.; The National Bank of Chambersburg, N. F. Towne, Mary M. Bacon, William B. Martin, John J. Guile, George Griffore, The Rice Street Building Society, Caroline Coleman, Mark W. Fay, Wilhelmina F. Phelps, The Simonds Manufacturing Company, Frank A. Berry, Howard Marston, The Workingmen's Building & Loan Society, The Ramsey County Building Society, Sarah C. Moore, Nora Brown, The Iowa Land Company, Limited; Elmer J. Barker, Martha R. Knauff, Pauline A. Hannaford, Horace E. Stevens, Dwight F. Brooks, Lester R. Brooks, and Anson J. Brooks, Partners as Brooks Brothers; L. G. Kilborn, Eleanor Tatum, Administratrix of the Estate of Samuel C. Tatum, Deceased, and Samuel C. Tatum, Jr., Deceased; Homar C. Potter, The Globe Building Company, F. L. Elwer, L. G. Crandall, C. M. Stone, W. H. Stone, and C. E. Tichener, Partners as Crandall, Stone & Company; William W. Parker, Thomas Tracy and Lawrence Tracy, Partners as Tracy Brothers; William F. Nelson, The Bank of Minneapolis, Andrew Borklund, The J. P. Gribben Lumber Company, C. H. McCormick and L. J. McCormick, Partners as C. H. & L. J. McCormick; William Peterson and Samuel B. Jelke, Partners as William Peterson & Company; Anthony Kelly, Hiram J. Wagner and John I. Black, Partners as Anthony Kelly & Company; William A. Campbell and George R. Lewis, Partners as Campbell & Lewis; Chester G. Higbee, Charles Bergquist, Gilbert E. Holien and Charles B. Blomgren, Partners as Holien & Blomgren; The St. Croix Lumber Company, Ole Oleson, Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton, Doing Business as the St. Paul Stained Glass Company; The
11 Bohn Manufacturing Company, B. F. Knauft, Lawrence I. Casserly and James R. Donnelly, Partners as Casserly & Donnelly; John J. Biebighauser, George W. McGuiggan and Neil Kelliher, Partners as McGuiggan & Kelliher; The Chapman-Drake Company, William Salisbury, Abraham Harris and Mark Harris, Partners as Harris Brothers; The Todd Pulley and Shafting Works, Earnest D. Babcock, W. P. Riley, Doing Business as Valley Iron Works; The Allington & Curtis Manufacturing Company, W. C. Armstrong, James J. Armstrong, and Bernard B. Armstrong, Partners as Armstrong Brothers; Isaac B. Davis and John O. Davis, Partners as J. B. Davis & Son; Hanford J. Perkins and Willis J. Perkins, Partners as Perkins & Company; W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah C. Nicols, Emma N. Pilkington, Henry Nicols, and Jessie A. Gregg, Partners as Nicols & Dean; The Canton Steam Pump Company, A. N. Nelson, Treasurer of Ramsey County, Minnesota; W. E. Burton, Treasurer of Ramsey County, Minnesota; F. A. Renz, Treasurer of Ramsey County, Minnesota; J. F. Wilcox, Frank Morand, The Gordon Steam Pump Company, William G. Mulli-

gan, The St. Paul Foundry Company, Dan. Baker, Daniel A. J. Baker, George P. Clark, Levi Houston, F. E. Elmund and Gus Carlson, Partners as Elmund & Carlson; The Woolson Spice Company, Richards Gordon and Paul D. Ferguson, Partners as Gordon & Ferguson; Andrew Schoch, The J. C. Hanley Lime Company, Robert Pearce and Charles P. Price, Partners as Pearce & Company; William Cunningham, Daniel B. Fisk, Daniel M. Fisk, and John E. L. Frasher, Partners as D. B. Fisk & Company; The German-American Hail Insurance Company, Andrew Johnson, James Davenport, Jr., William Poppenberger, F. C. Nelson, The Vulcan Iron Works, F. M. Schutte, Doing
12 Business as Schutte & Company; The Northwestern Fuel Company, Geo. W. Griggs and Emery G. Griggs, Partners as Grigg Brothers; Daniel M. Finlayson, Daniel H. Moon, and Edgar C. Long, Partners as D. M. Finlayson & Company; William Rodger and John D. Roberts, Partners as Rodger & Company; Eugene R. Ide and James R. Thompson, Partners as Ide & Thompson; J. B. Gazett, The St. Paul Trust Company, as Assignee of the Estate of Henry Marine and Peter Zimmer, Partners as Marine & Zimmer; Thomas Jefferson, P. J. Bowlin, Doing Business as P. J. Bowlin & Company; The Cleveland Brown & Company, The H. P. Rugg & Company, James L. Lovering, Henry S. Fairchild, Eleonor Tatum, Hannah Tatum, John B. Rossman, William R. Murray, Charles P. Barstow, Clarence E. Stone, Mary C. Tatum, Amy T. Hilles, and Elizabeth T. Long, Defendants.

To the judges of the circuit court of the United States, sitting in equity:

Your orators, Elizabeth Wetzel, Harriet A. Van Zant, Maggie L. Beckman, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mable Remsen, who are citizens of the State of Pennsylvania, residing in that State, Emma F. Hergesheimer, who is a citizen of the State of New Jersey, residing in that State, and John Wesley Remsen, who is a citizen of the State of Maryland, residing in that State, bring this their amended bill of complaint against the said The Minnesota Transfer Railway Company, Maitland E. Graves, Lucia Clark, Florence Lucia Clark, Archie Guthrie Clark, Fred Morse Clark, Louisa E. White, William O. Winston, Fendall G. Winston, Philip B. Winston, David C. Shepard, Peter Siems, Frank P. Shepard, Alvin W. Krech, James F. Jackson, William Deering, Rufus C. Jefferson, Charles F. Backus, L. L. Bennett, George Wilson, Jr., Nels P. Fransen,
13 James L. Lovering, Leonard W. French, Hiram Backus, Lilton E. Shields, William H. Cleary, John A. Cleary, George Strong, Emily R. Fisher, Frank H. McKelvey, Franklin C. Ford, George F. Copeland, Dora Marshall, Clinton Johnson, Leonard J. Dobner, Isabella Z. Kingsley, The Ramsey County Land & Loan Company, Henry S. Fairchild, Elizabeth Brophy, Edward Howard, Carrie L. Backus, Julia M. Callahan, Lewis H. Lipman, Mary C. Braden, Joseph A. Humphreys, Samuel M. Magoffin, Eleanor Tatum,

Amy T. Hilles, Elizabeth T. Long, John Weber, William W. Bixby, Charles L. Walker, William H. Wright, Clarence E. Stone, Frank Crawshaw, Frank Greening, Desire H. Michaud, Josephine A. Huber, Lydia J. Andrew, Herbert M. Crosby, Clinton J. Backus, Amanda E. Johnson, Charles A. Baker, Luther B. Little, George H. Bridgman, John B. Sanborn, Emma E. Chapman, Henry C. V. Hunderup, Benjamin W. Smith, Jed. L. Washburn, Maurice Tracy, Maurice C. Tracy, William H. Fuller, John B. Rossman, Sidney E. Bibbins, Charles E. Lingquist, Charles E. Lindquist, Harcourt Mott, Ola S. Johnson, N. B. Hogg, Jr., E. J. Fargo, John H. Moreland, Willis Danforth, James R. McKay, Kingsley H. Burrell, Caroline M. Burrell, Edith E. Thomas, John Luby, Samuel Strows, Mary C. Thaw, Emily H. Miller, Jennie A. Severn, Thomas W. Martin, Henry Bosse, Kate L. McDermott, John Johnson, Henry C. Babcock, George Lamb, Michael Towie, Charrie A. Morton, Dan. Baker, James C. Hening, Rachel H. Henning, Addie B. Mohler, Robert C. Wiley, Fannie W. Wiley, Tinsley V. Means, Ella B. Clark, Martin Johnson, Andrew G. Johnson, John Aronson, Henry L. Little, Hans Peterson, Owen Williams, Conrad Peters, Levi C. Emery, George R. Bartron, Charles F. Young, Mary Jane Ellison, Agnes A. Hamilton, W. J.
14 O'Toole, M. E. Nelson, Frank A. Ackerman, Cybele B. Flower, Clara W. A. Blackman, Charles W. Heath, Nels Frederickson, Anson B. Baker, Anton Peterson, Robert K. Evans, Richard Evans, Jr., Richard Eavans, Jr., Joseph J. Vilsmeyer, Christian Bendixen, Charles P. Barstow, Mary C. Tatum, The St. Paul Congregational Union of Ramsey County, Minnesota, Marion E. Martin, Mary Brosnahan, Bridget I. O'Leary, Annie M. O'Leary, Bridget Eagan, Mary Eagan, Maria C. Killiam, Thomas Helgesen, The State Bank of Minneapolis, Orin L. Benson, Frank W. Buswell, Lizzie J. Smith, Wallace W. Campbell, George G. Benz, Oliver J. Graham, Freeman J. Page, Erastus H. Murray, Emma G. Lockwood, Michael O'Neill, Sadie E. Martin, Luther B. Little, Thomas G. Harvey, M. P. Ryan, Augusta A. Garrison, James O. Roberts, Jacob A. Roberts, William G. Chapman, John A. Lindquist, Mary A. Crawshaw, William W. Holcomb, Anthony Schimansky, Edward B. Storer, Paul J. Lowell, Elise Hohneck, Lily M. Brown, Hans Monson, Charles O. Moline, Emil Moline, John Larson, Lewis Larson, Carrie Larson, Annie Larson, Andrew Olson, John August Peterson, John H. Cunningham, Thomas A. Carlson, Klaus J. Larson, Prindle Partridge, Eli S. Montri, Laurits A. Larsen, Christopher Bendixen, William R. Murray, Frederick Bell, Carrie A. Morton, E. I. Hoyt, Mary Little, John Olson, August Olson, Albin Severson, Eleanora Langevin, Mary Eleanora Michaud, Emma Flanagan, Louis A. Langevin, Eugene A. Langevin and Ida May Langevin, sole legatees and heirs of Edward Langevin, deceased, Nancy A. Danforth, Delaskie Danforth, Henry W. Danforth and Charles A. Danforth, the sole heirs-at-law of Willis Danforth, deceased, George Drew, J. E. Wells, and H. H. Goodrich, The St. Paul Trust Company, Mary H. Farquhar, Peter S. Roberts, Wm. H. Willsey, Hannah Austrian,
15 The German-American Building Association, The Lombard Investment Company, Maria W. Curtis, William K. Richard-

son and Winslow Warren, trustees under the will of Henry Richardson, deceased, William Brewster, Edward Motley, Maria A. Gilbert, Charles H. Wagner, I. F. Johnson, Gardiner Green, Jr., executor of the will of Rachel R. Wheeler, deceased, W. B. Hopkins, The Savings Bank of St. Paul, J. W. Frederick, Alfred F. Cooley, Oramel A. Richardson, John W. Bookwalter, as James Leffel & Co., The National Bank of Chambersburg, N. F. Towne, Mary M. Bacon, William B. Martin, John J. Guile, George Griffore, The Rice Street Building Society, Caroline Coleman, Mark W. Fay, Wilhelmina F. Phelps, The Simonds Manufacturing Company, Frank A. Berry, Howard Marston, The Workingmen's Building & Loan Society, The Ramsey County Building Society, Sarah C. Moore, Nora Brown, The Iowa Land Company, Limited, Elmer J. Barker, Martha R. Knauff, Pauline A. Hannaford, Horace E. Stevens, Dwight F. Brooks, Lester R. Brooks, and Anson J. Brooks, partners as Brooks Brothers, L. G. Kilborn, Eleanor Tatum, administratrix of the estate of Samuel C. Tatum, deceased, and Samuel C. Tatum, Jr., deceased, Homar C. Potter, The Globe Building Company, F. L. Elwer, L. G. Crandall, C. M. Stone, W. H. Stone and C. E. Tichener, partners as Crandall, Stone & Company, William W. Parker, Thomas Tracy and Lawrence Tracy, partners as Tracy Brothers, William F. Nelson, The Bank of Minneapolis, Andrew Borklund, The J. P. Gribben Lumber Company, C. H. McCormick and L. J. McCormick, partners as C. H. & L. J. McCormick; William Peterson and Samuel B. Jelke, partners as William Peterson & Company, Anthony Kelly, Hiram J. Wagner and John I. Black, partners as Anthony Kelly & Company, William A. Campbell and George R. Lewis,
16 partners as Campbell & Lewis, Chester G. Higbee, Charles Bergquist, Gilbert E. Holien and Charles B. Blomgren, partners as Holien & Blomgren, The St. Croix Lumber Company, Ole Oleson, Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton, doing business as the St. Paul Stained Glass Company, The Bohn Manufacturing Company, B. F. Knauft, Lawrence I. Casserly and James R. Donnelly, partners as Casserly & Donnelly, John J. Biebighauser, George W. McGuiggan and Neil Kelliher, partners as McGuiggan & Kelliher, The Chapman-Drake Company, William Salisbury, Abraham Harris and Mark Harris, partners as Harris Brothers, The Todd Pulley and Shafting Works, Earnest D. Babcock, W. P. Riley, doing business as Valley iron works, The Allington & Curtis Manufacturing Company, W. C. Armstrong, James J. Armstrong and Bernard B. Armstrong, partners as Armstrong Brothers, Isaac B. Davis and John O. Davis, partners as J. B. Davis & Son, Hanford J. Perkins and Willis J. Perkins, partners as Perkins & Company, W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah C. Nicols, Emma N. Pilkington, Henry Nicols and Jessie A. Gregg, partners as Nicols & Dean, The Canton Steam Pump Company, A. N. Nelson, treasurer of Ramsey county, Minnesota, W. E. Burton, treasurer of Ramsey county, Minnesota, F. A. Renz, treasurer of Ramsey county, Minnesota, J. F. Wilcox, Frank Morand, The Gordon Steam Pump Company, William G. Mulligan, The St. Paul Foundry Company, Dan. Baker,

Daniel A. J. Baker, George P. Clark, Levi Houston, F. E. Elmund and Gus Carlson, partners as Elmund & Carlson, The Woolson Spice Company, Richards Gordon, and Paul D. Ferguson, partners as Gordon & Ferguson, Andrew Schock, The J. C. Hanley Lime Company, Robert Pearce, and Charles P. Price,
17 partners as Pearce & Company, William Cunningham, Daniel B. Fisk, Daniel M. Fisk and John E. L. Frasher, partners as D. B. Fisk & Company, The German-American Hail Insurance Company, Andrew Johnson, James Davenport, Jr., William Poppenberger, F. C. Nelson, The Vulcan Iron Works, F. M. Schutte, doing business as Schutte & Company, The Northwestern Fuel Company, Geo. W. Griggs and Emery G. Griggs, partners as Griggs Brothers, Daniel M. Finlayson, Daniel H. Moon and Edgar C. Long, partners as D. M. Finlayson & Company, William Rodger and John D. Roberts, partners as Rodger & Company, Eugene R. Ide and James R. Thompson, partners as Ide & Thompson, J. B. Gazett, The St. Paul Trust Company as assignee of the estate of Henry Marine and Peter Zimmer, partners as Marine & Zimmer, Thomas Jefferson, P. J. Bowlin, doing business as P. J. Bowlin & Company, The Cleveland Brown & Company, The H. P. Rugg & Company, James L. Lovering, Henry S. Fairchild, Eleonor Tatum, Hannah Tatum, John B. Rossman, William R. Murray, Charles P. Barstow, Clarence E. Stone, Mary C. Tatum, Amy T. Hilles and Elizabeth T. Long, who are citizens of the State of Minnesota, and reside in said State, and thereupon your orators state—

That The Minnesota Transfer Railway Company, The St. Paul Trust Company, The Great Northern Railway Company, The German-American Building Association, The Lombard Investment Company, The Ramsey County Land and Loan Company, The St. Paul Congregational Union of Ramsey County, Minnesota, The State Bank of Minneapolis, The National Bank of Chambersburg, The Rice Street Building Society, The Simonds Manufacturing Company, The Savings Bank of St. Paul, The Workingmen's
18 Building and Loan Society, The Ramsey County Building Society, The Iowa Land Company, Limited, The Globe Building Company, The J. P. Gribben Lumber Company, The Bohn Manufacturing Company, The Chapman-Drake Company, The Todd Pulley and Shafting Works, The Allington & Curtice Manufacturing Company, The Canton Steam Pump Company, The Gordon Steam Pump Company, The St. Paul Foundry Company, The Woolsen Spice Company, The J. C. Hanley Lime Company, The German-American Hail Insurance Company, The Vulcan Iron Works, The Northwestern Fuel Company, The Cleveland, Brown & Company, The H. P. Rugg & Company, The Bank of Minneapolis and The St. Croix Lumber Company are corporations organized and existing under and by virtue of the laws of the State of Minnesota, with their principal office and place of business in said State.

That Eleanor Tatum is administratrix of the estate of Samuel C. Tatum, deceased, and also of the estate of Samuel C. Tatum, Jr., deceased.

That Eleanor Langevin, Mary Eleanor Michaud, Emma Flanna-

gan, Louis A. Langevin, Eugene A. Langevin and Ida May Langevin are the sole heirs and legatees of Edward Langevin, deceased.

That William K. Richardson and Winslow Warren are the trustees of and under the will of Henry L. Richardson, deceased, and that Gardiner Green, Jr., is the executor of and under the will of Rachael R. Wheeler, deceased.

That the St. Paul Trust Company is the assignee of the estate of Henry Marine and Peter Zimmer, partners as Marine & Zimmer.

That L. G. Crandall, C. M. Stone, W. H. Stone and C. E. Tichener are partners doing business under the name of Crandall, Stone & Company.

That Thomas Tracy and Lawrence Tracy are partners doing business under the firm name of Tracy Brothers.

19 That C. H. McCormick and L. J. McCormick are partners doing business under the firm name of C. H. and L. J. McCormick.

That William Peterson and Samuel B. Jelke are partners doing business under the firm name of William Peterson & Co.

That Anthony Kelly, Hiram J. Wagner and John I. Black are partners doing business under the firm name of Anthony Kelly & Co.

That William A. Campbell and George R. Lewis are partners doing business under the firm name of Campbell & Lewis.

That Gilbert E. Holien and Charles B. Blomgren are partners doing business under the firm name of Holien & Blomgren.

That Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton are partners doing business under the firm name of the St. Paul Stained Glass Company.

That Lawrence I. Casserly and James R. Donnelly are partners doing business under the firm name of Casserly & Donnelly.

That George W. McGuiggan and Neil Kelliher are partners doing business under the firm name of McGuiggan & Kelliher.

That Abraham Harris and Mark Harris are partners doing business under the firm name of Harris Brothers.

That W. C. Armstrong, James J. Armstrong and Bernard B. Armstrong are partners doing business under the firm name of Armstrong Brothers.

That Isaac B. Davis and John O. Davis are partners doing business under the firm name of J. B. Davis & Son.

That Hanford J. Perkins and Willis J. Perkins are partners doing business under the firm name of Perkins & Company.

That W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah

20 C. Nicols, Emma N. Pilkington, Henry Nicols and Jessie A. Gregg are partners doing business under the firm name of Nicols & Dean.

That F. E. Elmund and Gus Carlson are partners doing business under the firm name of Elmund & Carlson.

That Richards Gordon and Paul D. Ferguson are partners doing business under the firm name of Gordon & Ferguson.

That Robert Pearce and Charles P. Price are partners doing business under the firm name of Pearce & Company.

That Daniel B. Fisk, Daniel M. Fisk and John E. L. Frasher are partners doing business as D. B. Fisk & Company.

That George W. Griggs and Emery G. Griggs are partners doing business as Griggs Brothers.

That Daniel M. Finlayson, Daniel H. Moon and Edgar C. Long are partners doing business as D. M. Finlayson & Company.

That William Rodger and John D. Roberts are partners doing business as Rodger and Company.

That Eugene R. Ide and James R. Thompson are partners doing business under the firm name of Ide & Thompson.

That Nancy A. Danforth, Delaskie Danforth, Henry W. Danforth and Charles A. Danforth are the sole heirs-at-law of Willis Danforth, deceased.

That one George W. Remsen became in his lifetime duly entitled to a land warrant for enlistment and services in the United States Army under the terms of the act of Congress approved on the 11th day of February, 1847, and being so entitled to said land warrant, the said George W. Remsen died. That after his death, and on the 30th day of February, 1848, the United States Government duly issued its land warrant No. 28811 for one hundred and sixty (160) acres of land in the name of Elizabeth Remsen, widow, Harriet A. Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth
21 Remsen and George W. A. Remsen, children and heirs-at-law of the said George W. Remson, deceased, which warrant entitled them, pursuant to the provisions of the 9th section of said act of Congress approved on the 11th day of February, 1847, to locate said warrant on any quarter section of Government land subject to private entry under the regulations and restrictions established by the Commissioner of the General Land Office. That when said warrant was issued and when the same was assigned and transferred as hereinafter stated, said Elizabeth Remsen was the widow, and Harriet A. Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen were children, and the only heirs-at-law of the said George W. Remsen, deceased, and all minors under the age of fourteen except said Harriet A., who was seventeen.

That on or about the 6th day of October, 1848, the said Elizabeth Remsen, widow, was duly appointed the guardian of the persons and estates of said Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen, minor children of George W. Remsen, deceased, by the orphans' court of the city and county of Philadelphia, which had jurisdiction to appoint said guardian. And that on the 11th day of October, 1848, at Philadelphia, in the State of Pennsylvania, the said Elizabeth Remsen, purporting to act for herself and also as guardian for said minor children, joined with the said Harriet A. Remsen, and together they attempted to assign the said military land warrant by a written instrument executed and delivered on that day to one Nathan C. D. Taylor. Said assignment was in the words following, that is to say:

"For value received, we, Elizabeth Remsen, widow, for myself

and as guardian of the persons and estates of Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen, minor children of George W. Remsen, deceased, duly ap-
22 pointed by the orphans' court of the city and county of Philadelphia; and Harriet A. Remsen, do hereby sell and assign unto Nathan C. D. Taylor all our right and title, and all the right and title of the said minor children, to the within certificate or warrant No. 28811 for one hundred and sixty acres.

Witness *my* hands this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

her
ELIZABETH x REMSEN,
mark.
For Myself and as Guardian of the Minor Children of George W. Remsen, Deceased.
HARRIET A. REMSEN.

Attest:
ISAAC BOILEAU.
WM. F. SMALL.

Acknowledged before me this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

ISAAC BOILEAU,
Alderman and Justice of the Peace."

That said sale and assignment of said land warrant was, as your orators are advised and verily believe, wholly void and of no effect, because as your orators say, the said orphans' court before mentioned, which was the court having jurisdiction, never made any order or decree, or took any other proceedings, authorizing the said guardian to sell, transfer or assign the interest of said minors in said land warrant; and your orators further say that by the law of Pennsylvania, as well as by the law of the United States, to wit, the said act of 1847 before mentioned, the said guardian had no right or authority without the order or decree of said orphans' court to sell, transfer or assign the said interest of said minor children.

And moreover, the said widow Elizabeth was by the law of Pennsylvania entitled only to a common-law dower interest in said real estate, which could not be sold or assigned before admeasurement. And the said Harriet A. Remsen was a minor of the age of only seventeen years, and was married at the time to one
23 Jacob Heyer. By the law of Pennsylvania her conveyance was void without her husband's signature. That she did not know what said instrument was when she signed the same, was totally ignorant that she had any interest in said warrant or any lands, or that her father was or ever had been entitled to said warrant or said lands. She signed the paper in such ignorance and at request of her said mother, who represented that the signature was to a receipt and of a formal character. That she never received any consideration for her said alleged conveyance, and remained until within eight months past in total ignorance as to the matters herein alleged, as more fully stated hereafter.

That the said Nathan C. D. Taylor, as the assignee of said land warrant, located the said warrant on the southwest quarter (S. W. ¼) of section twenty-eight (28) in township twenty-nine (29) north, of range twenty-three (23) west, in the district of lands subject to sale at Stillwater in the Territory of Minnesota, which lands are now situated in the county of Ramsey in said State, and were at the time of said location Government lands subject to be appropriated by the location thereon of said land warrant. That the said land warrant was located as aforesaid on or about the 20th day of March, in the year 1850, and thereafter the Government of the United States issued its patent bearing date the said 20th day of March, 1850, which patent was in the words and figures following, that is to say:

"C" 288.

"The United States of America to all — whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of Congress entitled 'An act to raise for a limited time an additional military force and for other purposes,' approved February 11th, 1847, Elizabeth Remsen, widow
Harriet A. Remsen, Mary Ann Remsen, John W. Remsen,
24 Elizabeth Remsen and George W. A. Remsen, children, heirs-at-law of George W. Remsen, deceased, late a private Company H, Third regiment United States infantry, having deposited in the General Land Office a warrant in their favor numbered 28811: there is therefore granted by the United States unto Nathan C. D. Taylor, assignee of said Elizabeth Remsen in her own right, and as guardian of the aforesaid minor heirs, and to his heirs, the southwest quarter of section twenty-eight in township twenty-nine north, of range twenty-three west, in the district of lands subject to sale at Stillwater, Territory of Minnesota, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general, which said tract has been located in satisfaction of the aforementioned warrant in pursuance of the act of Congress above mentioned approved February 11th, 1847. To have and to hold the said quarter section of land with the appurtenances thereof unto the said Nathan C. D. Taylor, and to his heirs and assigns, forever.

In testimony whereof, I, Zachery Taylor, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington on the twentieth day of March in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy-fourth.

By the President:

[PROBATE COURT SEAL.] Z. TAYLOR,
By THOS. EWING, JR., *Secretary.*
N. SARGENT,
Recorder of the General Land Office."

Recorded vol. 17, page 385.

That thereafter the said Nathan C. D. Taylor caused said patent to be recorded in the office of the register of deeds of the county of Ramsey, in vol. "C" Deeds, page 288.

That the said Nathan C. D. Taylor afterwards executed divers and sundry conveyances of the said lands, or of different parts and parcel thereof, by which he conveyed the said lands, or all his right, title and interest in the same, unto sundry and divers persons, so that by said conveyances, or by a chain of conveyances originating as aforesaid in said Taylor, all the right, title and interest of said Taylor under said patent as to portions of said premises have passed to and are now owned by the said defendants, The Minnesota Transfer Railway Company, Maitland E. Graves, Lucia Clark, Florence Lucia Clark, Archie Guthrie Clark, Fred Morse Clark, Louisa E. White, William O. Winston, Fendall G. Winston, Philip B. Winston, David C. Shepard, Peter Siems, Frank P. Shepard, Alvin W. Krech, James F. Jackson, William Deering, Rufus C. Jefferson, Charles F. Backus, L. L. Bennett, George Wilson, Jr., Nels P. Fransen, James L. Lovering, Leonard W. French, Hiram Backus, Lilton E. Shields, William H. Cleary, John A. Cleary, George Strong, Emily R. Fisher, Frank H. McKelvey, Franklin C. Ford, George F. Copeland, Dora Marshall, Clinton Johnson, Leonard J. Dobner, Isabella Z. Kingsley, The Ramsey County Land & Loan Company, Henry S. Fairchild, Elizabeth Brophy, Edward Howard, Carrie L. Backus, Julia M. Callahan, Lewis H. Lipman, Mary C. Braden, Joseph A. Humphreys, Samuel M. Magoffin, Eleanor Tatum, Amy T. Hilles, Elizabeth T. Long, John Weber, William W. Bixby, Charles L. Walker, William H. Wright, Clarence E. Stone, Frank Crawshaw, Frank Greening, Desire H. Michaud, Josephine A. Huber, Lydia J. Andrew, Herbert M. Crosby, Clinton J. Backus, Amanda E. Johnson, Charles A. Baker, Luther B. Little, George H. Bridgman, John B. Sanborn, Emma E. Chapman, Henry C. V. Hunderup, Benjamin W. Smith, Jed. L. Washburn, Maurice Tracy, Maurice C. Tracy, William H. Fuller, John B. Rossman, Sidney E. Bibbins, Charles E. Lingquist, Charles E. Lindquist, Harcourt Mott, Ola S. Johnson, N. B. Hogg, Jr., E. J. Fargo, John H. Moreland, Willis Danforth, James R. McKay, Kingsley H. Burrell, Caroline M. Burrell, Edith E. Thomas, John Luby, Samuel Strows, Mary C. Thaw, Emily H. Miller, Jennie A. Severn, Thomas W. Martin, Henry Bosse, Kate L. McDermott, John Johnson, Henry C. Babcock, George Lamb, Michael Towey, Charrie A. Morton, Dan. Baker, James C. Hening, Rachel H. Henning, Addie B. Mohler, Robert C. Wiley, Fannie W. Wiley, Tinsley V. Means, Ella B. Clark, Martin Johnson, Andrew G. Johnson, John Aronson, Henry L. Little, Hans Peterson, Owen Williams, Conrad Peters, Levi C. Emery, George R. Bartron, Charles F. Young, Mary Jane Ellison, Agnes A. Hamilton, W. J. O'Toole, M. E. Nelson, Frank A. Ackerman, Cybele B. Flower, Clara W. A. Blackman, Charles W. Heath, Nels Frederickson, Anson B. Baker, Anton Peterson, Robert K. Evans, Richard Evans, Jr., Richard Eavans, Jr., Joseph J. Vilsmeyer, Christian Bendixen, Charles P. Barstow, Mary C. Tatum, The St. Paul Congregational Union of Ramsey County, Minnesota, Marion E. Martin, Mary

Brosnahan, Bridget I. O'Leary, Annie M. O'Leary, Bridget Eagan, Mary Eagan, Maria C. Killiam, Thomas Helgesen, The State Bank of Minneapolis, Orin L. Benson, Frank W. Buswell, Lizzie J. Smith, Wallace W. Campbell, George G. Benz,

27 Oliver J. Graham, Freeman J. Page, Erastus H. Murray, Emma G. Lockwood, Michael O'Neill, Sadie E. Martin, Luther B. Little, Thomas G. Harvey, M. P. Ryan, Augusta A. Garrison, James O. Roberts, Jacob A. Roberts, William G. Chapman, John A. Lindquist, Mary A. Crawshaw, William W. Holcomb, Anthony Schimansky, Edward B. Storer, Paul J. Lowell, Elise Hohneck, Lily M. Brown, Hans Monson, Charles O. Moline, Emil Moline, John Larson, Lewis Larson, Carrie Larson, Annie Larson, Andrew Olson, John August Peterson, John H. Cunningham, Thomas A. Carlson, Klaus J. Larson, Prindle Partridge, Eli S. Montri, Laurits A. Larsen, Christopher Bendixen, William R. Murray, Frederick Bell, Carrie A. Morton, E. I. Hoyt, Mary Little, John Olson, August Olson, Albin Severson, Eleanora Langevin, Mary Eleanora Michaud, Emma Flanagan, Louis A. Langevin, Eugene A. Langevin and Ida May Langevin, sole legatees and heirs of Edward Langevin, deceased, Nancy A. Danforth, Delaskie Danforth, Henry W. Danforth and Charles A. Danforth, the sole heirs-at-law of Willis Danforth, deceased, George Drew, J. E. Wells, and H. H. Goodrich, who now claim to be the sole and absolute owners of portions of the said premises, which your orators are not able to describe or specify with more particularity. Your orators have no more exact and particular knowledge concerning the said conveyances from the said Taylor or mesne conveyances between him and the said defendants, and are therefore unable to state the said conveyances with more particularity. But your orators allege that each and every of the said defendants claim title to the said lands or some part thereof under a conveyance from said Taylor or a chain of conveyances originating with him, after the record of said patent in the office of the register of deeds as before set forth.

28 That the said other defendants, to wit: The St. Paul Trust Company, Mary H. Farquhar, Peter S. Roberts, Wm. H. Willsey, Hannah Austrian, The German-American Building Association, The Lombard Investment Company, Maria W. Curtis, William K. Richardson and Winslow Warren, trustees under the will of Henry Richardson, deceased, William Brewster, Edward Motley, Maria A. Gilbert, Charles H. Wagner, I. F. Johnson, Gardiner Green, Jr., executor of the will of Rachel R. Wheeler, deceased, W. B. Hopkins, The Savings Bank of St. Paul, J. W. Frederick, Alfred F. Cooley, Oramel A. Richardson, John W. Bookwalter, as James Leffel & Co., The National Bank of Chambersburg, N. F. Towne, Mary M. Bacon, William B. Martin, John J. Guile, George Griffore, The Rice Street Building Society, Caroline Coleman, Mark W. Fay, Wilhelmina F. Phelps, The Simonds Manufacturing Company, Frank A. Berry, Howard Marston, The Workingmen's Building & Loan Society, The Ramsey County Building Society, Sarah C. Moore, Nora Brown, The Iowa Land Company, Limited, Elmer J. Barker, Martha R. Knauff, Pauline A. Hannaford, Horace E. Stevens, Dwight F. Brooks, Lester

R. Brooks, and Anson J. Brooks, partners as Brooks Brothers, L. G. Kilborn, Eleanor Tatum, administratrix of the estate of Samuel C. Tatum, deceased, and Samuel C. Tatum, Jr., deceased, Homar C. Potter, The Globe Building Company, F. L. Elwer, L. G. Crandall, C. M. Stone, W. H. Stone and C. E. Tichener, partners as Crandall, Stone & Company, William W. Parker, Thomas Tracy and Lawrence Tracy, partners as Tracy Brothers, William F. Nelson, The Bank of Minneapolis, Andrew Borklund, The J. P. Gribben Lumber Company, C. H. McCormick and L. J. McCormick, partners as C. H. & L. J. McCormick, William Peterson and Samuel B. Jelke,
29 partners as William Peterson & Company, Anthony Kelly, Hiram J. Wagner and John I. Black, partners as Anthony Kelly & Company, William A. Campbell and George R. Lewis, partners as Campbell & Lewis, Chester G. Higbee, Charles Bergquist, Gilbert E. Holien and Charles B. Blomgren, partners as Holien & Blomgren, The St. Croix Lumber Company, Ole Oleson, Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton, doing business as the St. Paul Stained Glass Company, The Bohn Manufacturing Company, B. F. Knauft, Lawrence I. Casserly and James R. Donnelly, partners as Casserly & Donnelly, John J. Biebighauser, George W. McGuiggan and Neil Kelliher, partners as McGuiggan & Kelliher, The Chapman-Drake Company, William Salisbury, Abraham Harris and Mark Harris, partners as Harris Brothers, The Todd Pulley and Shafting Works, Earnest D. Babcock, W. P. Riley, doing business as Valley iron works, The Allington & Curtis Manufacturing Company, W. C. Armstrong, James J. Armstrong and Bernard B. Armstrong, partners as Armstrong Brothers, Isaac B. Davis and John O. Davis, partners as J. B. Davis & Son, Hanford J. Perkins and Willis J. Perkins, partners as Perkins & Company, W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah C. Nicols, Emma N. Pilkington, Henry Nicols and Jessie A. Gregg, partners as Nicols & Dean, The Canton Steam Pump Company, A. N. Nelson, treasurer of Ramsey county, Minnesota, W. E. Burton, treasurer of Ramsey county, Minnesota, F. A. Renz, treasurer of Ramsey county, Minnesota, J. F. Wilcox, Frank Morand, The Gordon Steam Pump Company, William G. Mulligan, The St. Paul Foundry Company, Dan. Baker, Daniel A. J. Baker, George P. Clark, Levi Houston, F. E. Elmund and Gus Carlson, partners as Elmund & Carlson, The Wool-
30 son Spice Company, Richards Gordon and Paul D. Ferguson, partners as Gordon & Ferguson, Andrew Schoch, The J. C. Hanley Lime Company, Robert Pearce, and Charles P. Price, partners as Pearce & Company, William Cunningham, Daniel B. Fisk, Daniel M. Fisk and John E. L. Frasher, partners as D. B. Fisk & Company, The German-American Hail Insurance Company, Andrew Johnson, James Davenport, Jr., William Poppenberger, F. C. Nelson, The Vulcan Iron Works, F. M. Schutte, doing business as Schutte & Company, The Northwestern Fuel Company, Geo. W. Griggs and Emery G. Griggs, partners as Griggs Brothers, Daniel M. Finlayson, Daniel H. Moon and Edgar C. Long, partners as D. M. Finlayson & Company, William Rodger and John D

Roberts, partners as Rodger & Company, Eugene R. Ide and James R. Thompson, partners as Ide & Thompson, J. B. Gazett, The St. Paul Trust Company as assignee of the estate of Henry Marine and Peter Zimmer, partners as Marine & Zimmer, Thomas Jefferson, P. J. Bowlin, doing business as P. J. Bowlin & Company, The Cleveland Brown & Company, The H. P. Rugg & Company, James L. Lovering, Henry S. Fairchild, Eleonor Tatum, Hannah Tatum, John B. Rossman, William R. Murray, Charles P. Barstow, Clarence E. Stone, Mary C. Tatum, Amy T Hilles and Elizabeth T. Long, have or claim to have judgments or other liens against said premises, and all of them claim under, through or against the said defendants first above named, and all of their alleged liens, claims and demands are subject and subordinate to the title of your orators. And your orators allege that each and every of the defendants has acquired his title and rights with full notice and knowledge of all the recitals in said patent and all the terms thereof, and of all the facts hereinbefore stated.

31 That your orator Elizabeth Wetzel is the Elizabeth Remsen, widow of George W. Remsen before mentioned. Your orator Harriet A. Van Zant is the said Harriet A. Remsen. That said Mary Ann Remsen was born on August 12, 1835, and died June 12, 1882, leaving surviving her children and sole heirs-at-law your orators Emma F. Hergesheimer and Maggie L. Beckman. Your orator John Wesley Remsen is one of the before-mentioned minor children of said George W., and was born on the 8th day of November, 1837. The said Elizabeth W. Remsen was born on the 22d day of February, 1840, and died on the 11th day of October, 1862, unmarried and without issue, and her interest then descended to your orators as provided by the statutes of Minnesota. Said George W. A. Remsen was born on the 18th day of September, 1842, and died in 1878, leaving your orators Mary J. Remsen his widow, George W. Remsen, Clara B. Remsen and Mable Remsen his children, said widow and children being his sole heirs-at-law.

That neither your orators nor their predecessors in interest (except the said Elizabeth Wetzel), at the time of the alleged assignment of said land warrant or at any time thereafter, knew of the said sale, and they remained in absolute ignorance thereof and also in absolute ignorance of any such land warrant or any land warrant whatever having been issued to them or to their father or their guardian, and also in absolute ignorance that their father ever became entitled to any such land warrant or any land warrant whatever; that not until August in the year 1891 did your orators or any of their predecessors in interest (except said Elizabeth Wetzel) acquire any knowledge or information whatever of any of the facts in this bill set forth. That in August, 1891, they acquired information of the facts herein stated in the following manner: Letters had been

32 before received by them from parties in the city of St. Paul, State of Minnesota, representing the defendants or some of them, requesting your orators or some of them, to execute quitclaim deeds of certain interests which they were supposed to have or to have had in lands in the State of Minnesota. The deeds so requested

being for all their interest in lands anywhere within said State, and the said parties declining to describe the particular land intended to be conveyed. That when said letters were received, each and every of your orators, except said Elizabeth Wetzel, were totally ignorant of ever having had any interest in any lands in the State of Minnesota, but on the receipt of said letters they consulted counsel, who caused an investigation to be made of the records of the Land Department of the United States at Washington, and in the course of such investigation and during the said month of August, your orators' said counsel ascertained substantially the facts in this bill set forth. And thereupon your orators employed counsel both in the city of Philadelphia and the city of St. Paul to investigate the title to said lands and give opinions thereupon, and said investigation and the preparation of information on which to base this suit has been diligently prosecuted ever since, and your orators have commenced this suit as soon as it was possible under the circumstances for them to do so.

Your orators have and do hereby ratify the location of said military land warrant on the lands above described, and say that the said defendants and all persons having any right, title or interest in said lands arising under or through the said patent of the United States of America before set forth, are trustees of the said lands for the benefit of your orators. Your orators further state that the value of said premises exceed- the sum of twenty-five thousand dollars.

But the said defendants dispute said trust relation, and
33 deny that your orators have any right, title or interest in said premises, and claim to own the same or their respective interests therein absolutely free from any equity or right in your orators or any of them.

That said defendants falsely pretend and claim that the sale of said land warrant to the said Nathan C. D. Taylor was made in good faith for a consideration equal to the full value of said warrant paid by the said Taylor to the said widow and children, which claim and pretence is in no respect true, and the fact is that your orators have no knowledge, information or belief as to what consideration or whether any consideration was paid to the said Elizabeth Remsen guardian and widow; and your orators each and every of them deny that any consideration was at any time whatever paid to any of your orators who are the children of the said George W. Remsen.

And the said defendants further falsely pretend and claim that the said Nathan C. D. Taylor deeded the said premises to one Chas. D. Gilfillan in good faith and for full value, and that said Gilfillan deeded the said premises to one Henry McKenty in good faith and for full value, and that the said McKenty deeded the said premises to one Allen Pierse in good faith and for full value, and that the said Pierse afterward conveyed said premises to Pennock Pusey in good faith and for full value, and that said Pennock Pusey afterward conveyed said premises to John W. Tatum in good faith and for full value, and that the said premises were afterwards conveyed by the heirs of said Tatum in good faith and for full value to the

various defendants in this case, all of which pretences and claims your orators say are untrue. The fact being that each and every of the said persons in this paragraph above named and each and every of the defendants in this suit, purchased the said premises with full notice of your orators' rights; and as to whether the said persons or the said defendants or either or any of them paid full value
34 for said premises, or as to what consideration they or any of them paid therefore, your orators have no knowledge or information sufficient to form a belief.

The defendants further falsely allege and claim that the value of the improvements on said premises is over $2,000,000 which your orators deny to be the fact, but as to how much said improvements are worth, your orators have no knowledge or information sufficient to form a belief.

The defendants further falsely allege and claim that the said defendants and their grantors have been in possession of said premises under their said titles openly and notoriously, and have exercised acts of ownership over the same and paid the taxes and assessments thereon for nearly forty years last past, and that said open and notorious possession has continued for twenty years last past, and that said facts have existed with the knowledge of your orators. All of which claims and pretences your orators allege to be untrue, the fact being that until a few months before the commencement of this suit, your orators knew nothing whatever concerning said premises or the occupation thereof, or the title thereto, not knowing even that they ever had any claim to the same, or to the warrant under which the same were located and patented. Your orators expressly deny that the said defendants or any or either of them have been in possession at all of said premises or any part thereof for the period of fifteen years before this suit was commenced. But your orators admit that some of the said defendants have been in possession of portions of said premises, and as to exactly what length of time said possession has continued your orators have no knowledge or information sufficient to form a belief.

35 And the said defendants further falsely allege and claim that your orators, their ancestors and predecessors, have for many years had knowledge of the fact that said land was owned by said Taylor and his grantees and persons claiming under said Taylor, and that the said land was increasing rapidly in value, and that extensive improvements were being made thereon. All of which your orators expressly and positively deny, the fact being that until a few months before this bill was filed they had no knowledge whatever concerning said premises or the value thereof or improvements thereon. And your orators further allege that each and every of the said defendants has taken his title in said premises with full notice of your orators' rights as hereinbefore set forth, and has put upon said premises whatever improvements there may be thereon, also with full notice and knowledge of your orators' rights as above stated. And the said defendants who have judgments and mortgages against said premises or parts thereof, have acquired

their rights in the same manner with full notice and knowledge of your orators' title.

The said defendants further falsely pretend and claim that if they hold said lands in said trust for your orators, more than six years have elapsed since your orators' cause of action accrued before the commencement of this suit, and that hence the same is barred by the statute of limitations of Minnesota, which pretence and claim your orators say is without any foundation in fact. And your orators allege that no demand was ever made on the said defendants or any of them to recognize said trust relation or convey said premises, or account to your orators for the issues and profits thereof until about the date when this suit was commenced. And your orators further allege that said trust relation was absolutely unknown to your orators and each of them until within six months before this bill was filed.

36 The said defendants further falsely allege and claim that your orators have acquiesced in the title of the defendants and their grantors, and that your orators have therefore been guilty of such laches as ought in equity and good conscience to bar them from any relief in this action. Which pretence and claim your orators say is in every respect false, your orators never having in any manner acquiesced in the defendants' claims or any of them, or been guilty of any laches or delay which ought in equity to bar them from maintaining this suit.

All of which claims and proceedings of the said defendants are contrary to equity and good conscience. In consideration whereof, and inasmuch as your orators are entirely remediless according to the strict rules of the common law, and can only have relief in equity, and,

To the end that the said defendants may, if they can, show why your orators should not have the relief hereby prayed (an answer under oath being expressly waived) and that the said defendants may come to a fair and just account and may be decreed to convey unto your orators their several titles, rights and interests in said lands before described, and that in default of their executing said conveyances as decreed, the title to said premises may be passed unto your orators by decree of this court, and all right, title and interest of the said defendants and each of them, may be cut off and forever barred and declared void, and that your orators may have such further and other relief as the nature of their case shall require, and as may be equitable, may it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America to be directed to the said The Minnesota Transfer Railway Company, Maitland E. Graves, Lucia Clark, Florence Lucia Clark,

37 Archie Guthrie Clark, Fred Morse Clark, Louisa E. White, William O. Winston, Fendall G. Winston, Philip B. Winston, David C. Shepard, Peter Siems, Frank P. Shepard, Alvin W. Krech, James F. Jackson, William Deering, Rufus C. Jefferson, Charles F. Backus, L. L. Bennett, George Wilson, Jr., Nels P. Fransen, James L. Lovering, Leonard W. French, Hiram Backus, Lilton E. Shields, William H. Cleary, John A. Cleary, George Strong, Emily

R. Fisher, Frank H. McKelvey, Franklin C. Ford, George F. Copeland, Dora Marshall, Clinton Johnson, Leonard J. Dobner, Isabella Z. Kingsley, The Ramsey County Land & Loan Company, Henry S. Fairchild, Elizabeth Brophy, Edward Howard, Carrie L. Backus, Julia M. Callahan, Lewis H. Lipman, Mary C. Braden, Joseph A. Humphreys, Samuel M. Magoffin, Eleanor Tatum, Amy T. Hilles, Elizabeth T. Long, John Weber, William W. Bixby, Charles L. Walker, William H. Wright, Clarence E. Stone, Frank Crawshaw, Frank Greening, Desire H. Michaud, Josephine A. Huber, Lydia J. Andrew, Herbert M. Crosby, Clinton J. Backus, Amanda E. Johnson, Charles A. Baker, Luther B. Little, George H. Bridgman, John B. Sanborn, Emma E. Chapman, Henry C. V. Hunderup, Benjamin W. Smith, Jed. L. Washburn, Maurice Tracy, Maurice C. Tracy, William H. Fuller, John B. Rossman, Sidney E. Bibbins, Charles E. Lingquist, Charles E. Lindquist, Harcourt Mott, Ola S. Johnson, N. B. Hogg, Jr., E. J. Fargo, John H. Moreland, Willis Danforth, James R. McKay, Kingsley H. Burrell, Caroline M. Burrell, Edith E. Thomas, John Luby, Samuel Strows, Mary C. Thaw, Emily H. Miller, Jennie A. Severn, Thomas W. Martin, Henry Bosse, Kate L. McDermott, John Johnson, Henry C. Babcock, George Lamb, Michael Towey, Charrie A. Morton, Dan. Baker, James C. Hening,
38 Rachel H. Henning, Addie B. Mohler, Robert C. Wiley, Fannie W. Wiley, Tinsley V. Means, Ella B. Clark, Martin Johnson, Andrew G. Johnson, John Aronson, Henry L. Little, Hans Peterson, Owen Williams, Conrad Peters, Levi C. Emery, George R. Bartron, Charles F. Young, Mary Jane Ellison, Agnes A. Hamilton, W. J. O'Toole, M. E. Nelson, Frank A. Ackerman, Cybele B. Flower, Clara W. A. Blackman, Charles W. Heath, Nels Frederickson, Anson B. Baker, Anton Peterson, Robert K. Evans, Richard Evans, Jr., Richard Eavans, Jr., Joseph J. Vilsmeyer, Christian Bendixen, Charles P. Barstow, Mary C. Tatum, The St. Paul Congregational Union of Ramsey County, Minnesota, Marion E. Martin, Mary Brosnahan, Bridget I. O'Leary, Annie M. O'Leary, Bridget Eagan, Mary Eagan, Maria C. Killiam, Thomas Helgesen, The State Bank of Minneapolis, Orin L. Benson, Frank W. Buswell, Lizzie J. Smith, Wallace W. Campbell, George G. Benz, Oliver J. Graham, Freeman J. Page, Erastus H. Murray, Emma G. Lockwood, Michael O'Neill, Sadie E. Martin, Luther B. Little, Thomas G. Harvey, M. P. Ryan, Augusta A. Garrison, James O. Roberts, Jacob A. Roberts, William G. Chapman, John A. Lindquist, Mary A. Crawshaw, William W. Holcomb, Anthony Schimansky, Edward B. Storer, Paul J. Lowell, Elise Hohneck, Lily M. Brown, Hans Monson, Charles O. Moline, Emil Moline, John Larson, Lewis Larson, Carrie Larson, Annie Larson, Andrew Olson, John August Peterson, John H. Cunningham, Thomas A. Carlson, Klaus J. Larson, Prindle Partridge, Eli S. Montri, Laurits A. Larsen, Christopher Bendixen, William R. Murray, Frederick Bell, Carrie A. Morton, E. I. Hoyt, Mary Little, John Olson, August Olson, Albin Severson, Eleanora Langevin, Mary Eleanora Michaud, Emma Flanagan, Louis
39 A. Langevin, Eugene A. Langevin and Ida May Langevin, sole legatees and heirs of Edward Langevin, de-

ceased, Nancy A. Danforth, Delaskie Danforth, Henry W. Danforth and Charles A. Danforth, the sole heirs-at-law of Willis Danforth, deceased, George Drew, J. E. Wells, and H. H. Goodrich, The St. Paul Trust Company, Mary H. Farquhar, Peter S. Roberts, Wm. H. Willsey, Hannah Austrian, The German-American Building Association, The Lombard Investment Company, Maria W. Curtis, William K. Richardson and Winslow Warren, trustees under the will of Henry Richardson, deceased, William Brewster, Edward Motley, Maria A. Gilbert, Charles H. Wagner, I. F. Johnson, Gardiner Green, Jr., executor of the will of Rachel R. Wheeler, deceased, W. B. Hopkins, The Savings Bank of St. Paul, J. W. Frederick, Alfred F. Cooley, Oramel A. Richardson, John W. Bookwalter, as James Leffel & Co., The National Bank of Chambersburg, N. F. Towne, Mary M. Bacon, William B. Martin, John J. Guile, George Griffore, The Rice Street Building Society, Caroline Coleman, Mark W. Fay, Wilhelmina F. Phelps, The Simonds Manufacturing Company, Frank A. Berry, Howard Marston, The Workingmen's Building & Loan Society, The Ramsey County Building Society, Sarah C. Moore, Nora Brown, The Iowa Land Company, Limited, Elmer J. Barker, Martha R. Knauff, Pauline A. Hannaford, Horace E. Stevens, Dwight F. Brooks, Lester R. Brooks, and Anson J. Brooks, partners as Brooks Brothers, L. G. Kilborn, Eleanor Tatum, administratrix of the estate of Samuel C. Tatum, deceased, and Samuel C. Tatum, Jr., deceased, Homar C. Potter, The Globe Building Company, F. L. Elwer, L. G. Crandall, C. M. Stone, W. H. Stone and C. E. Tichener, partners as Crandall, Stone & Company,
40 William W. Parker, Thomas Tracy and Lawrence Tracy, partners as Tracy Brothers, William F. Nelson, The Bank of Minneapolis, Andrew Borklund, The J. P. Gribben Lumber Company, C. H. McCormick and L. J. McCormick, partners as C. H. & L. J. McCormick, William Peterson and Samuel B. Jelke, partners as William Peterson & Company, Anthony Kelly, Hiram J. Wagner and John I. Black, partners as Anthony Kelly & Company, William A. Campbell and George R. Lewis, partners as Campbell & Lewis, Chester G. Higbee, Charles Bergquist, Gilbert E. Holien and Charles B. Blomgren, partners as Holien & Blomgren, The St. Croix Lumber Company, Ole Oleson, Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton, doing business as the St. Paul Stained Glass Company, The Bohn Manufacturing Company, B. F. Knauft, Lawrence I. Casserly and James R. Donnelly, partners as Casserly & Donnelly, John J. Biebighauser, George W. McGuiggan and Neil Kelliher, partners as McGuiggan & Kelliher, The Chapman-Drake Company, William Salisbury, Abraham Harris and Mark Harris, partners as Harris Brothers, The Todd Pulley and Shafting Works, Earnest D. Babcock, W. P. Riley, doing business as Valley iron works, The Allington & Curtis Manufacturing Company, W. C. Armstrong, James J. Armstrong and Bernard B. Armstrong, partners as Armstrong Brothers, Isaac B. Davis and John O. Davis, partners as J. B. Davis & Son, Hanford J. Perkins and Willis J. Perkins, partners as Perkins & Company, W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah C. Nicols, Emma

N. Pilkington, Henry Nicols and Jessie A. Gregg, partners as Nicols & Dean, The Canton Steam Pump Company, A. N. Nelson, treasurer of Ramsey county, Minnesota, W. E. Burton, treasurer of Ramsey county, Minnesota, F. A. Renz, treasurer of Ramsey county,
41 Minnesota, J. F. Wilcox, Frank Morand, The Gordon Steam Pump Company, William G. Mulligan, The St. Paul Foundry Company, Dan. Baker, Daniel A. J. Baker, George P. Clark, Levi Houston, F. E. Elmund and Gus Carlson, partners as Elmund & Carlson, The Woolson Spice Company, Richards Gordon, and Paul D. Ferguson, partners as Gordon & Ferguson, Andrew Schoch, The J. C. Hanley Lime Company, Robert Pearce, and Charles P. Price, partners as Pearce & Company, William Cunningham, Daniel B. Fisk, Daniel M. Fisk and John E. L. Frasher, partners as D. B. Fisk & Company, The German-American Hail Insurance Company, Andrew Johnson, James Davenport, Jr., William Poppenberger, F. C. Nelson, The Vulcan Iron Works, F. M. Schutte, doing business as Schutte & Company, The Northwestern Fuel Company, Geo. W. Griggs and Emery G. Griggs, partners as Griggs Brothers, Daniel M. Finlayson, Daniel H. Moon and Edgar C. Long, partners as D. M. Finlayson & Company, William Rodger and John D. Roberts, partners as Rodger & Company, Eugene R. Ide and James R. Thompson, partners as Ide & Thompson, J. B. Gazett, The St. Paul Trust Company as assignee of the estate of Henry Marine and Peter Zimmer, partners as Marine & Zimmer, Thomas Jefferson, P. J. Bowlin, doing business as P. J. Bowlin & Company, The Cleveland Brown & Company, The H. P. Rugg & Company, James L. Lovering, Henry S. Fairchild, Eleonor Tatum, Hannah Tatum, John B. Rossman, William R. Murray, Charles P. Barstow, Clarence E. Stone, Mary C. Tatum, Amy T. Hilles and Elizabeth T. Long, thereby commanding them and every of them at a certain date and under a certain pain therein to be specified, personally to appear
42 before your honors in this honorable court, and then and there to answer all and singularly the premises, and to stand to, perform and abide such order and decree therein as shall seem agreeable to equity and good conscience, and your orators will ever pray.

ELIZABETH WETZEL,
HARRIET A. VAN ZANT,
EMMA F. HERGESHEIMER,
MAGGIE L. BECKMAN,
JOHN WESLEY REMSEN,
MARY J. REMSEN,
GEORGE W. REMSEN,
CLARA B. REMSEN, AND
MABEL REMSEN,

By W. C. MAYNE, *Of Philadelphia, Pa.*,
CLAPP, BRAMHALL & TAYLOR,
Of St. Paul, Minn.,
LUSK, BUNN & HADLEY,
Of St. Paul, Minn.,
Their Solicitors.

C. W. BUNN, *Of Counsel.*

43 *Answer of Bridget Egan et als.*

And now come Bridget Egan *et als.*, defendants in the above-*above* entitled action, and, reserving to themselves all right of exception to the bill of complaint herein, for answer thereto say:

Defendants admit and allege that one George W. Remson in his lifetime became entitled to a land warrant for enlistment and services in the United States Army, under the terms of an act of Congress, approved February 11, 1847, entitled "An act to raise, for a limited time, an additional military force, and for other purposes," and the various amendments thereto, or upon the same subject. That said Remson, having died prior to the issuance of said land warrant, his widow and children became entitled to have the same issued to them, and thereafter the United States duly issued a land warrant, numbered 28811, to the widow and children of said deceased soldier, viz., to Elizabeth Remson, widow, to Harriet A. Remson, Mary Ann Remson, John Wesley Remson, Elizabeth Remson and George W. A. Remson, whom defendants admit and allege, on information and belief, were the children and heirs-at-law of Geo. W. Remson, deceased. That upon the issuance of said land warrant, aforesaid, the said widow and children became the owners thereof; that the same was personal property, and salable and assignable as personal property, and that the same entitled the assignee or assignees of the said widow and children to pay for 160 acres of public land with said land warrant, which said land warrant was of the value of not more than $100.

44 Defendants deny that the said Elizabeth Remson, widow of George W. Remson, was entitled to any dower in any lands so to be selected, and allege the fact to be that the said land warrant was a mere right to select lands, and was personal property; and deny that the assignment thereof was void, or that the assignment of Harriet A. Remson was void because her husband did not join with her in said conveyance, and allege that the said defendants have no knowledge or information, sufficient to form a belief, as to whether said Harriet A. Remson was a minor or was married at the time of the said assignment, hence deny the same.

Defendants further admit and allege that on the said 6th day of October, A. D. 1848, the said Elizabeth Remson was duly appointed the guardian of the said minor children of the said Geo. W. Remson, as in the bill of complaint alleged, and that the said orphans' court of the city and county of Philadelphia, had jurisdiction of the subject-matter and of the parties, and duly and properly made said appointment, and that the said Elizabeth Remson, for herself, and as guardian of the minor children of the said George W. Remson, deceased, and the said Harriet A. Remson, duly sold and assigned said land warrant to the said Nathan C. D. Taylor, and made and executed said assignment in writing, a copy of which said assignment is set forth in the bill of complaint herein.

Defendants deny that the said orphans' court never made any

order, decree, or took any proceeding authorizing the said
45 guardian to sell, transfer, or assign the interest of said minors in said land warrant; and deny that by the laws of Pennsylvania and the said act of Congress before mentioned, the said guardian had no authority to sell and transfer the said land warrant; and allege that the said guardian was duly authorized and had power to make said assignment and sale; that under the laws of Pennsylvania and the laws of the United States at the time of said transfer and assignment it was not necessary to procure from the orphans' court or probate court or any court, any order or decree authorizing the sale of said land warrant; nevertheless the said orphans' court of the city and county of Philadelphia did, by the appointment of said Elizabeth Remson, aforesaid, duly authorize her to sell, assign and transfer said land warrant; and the said sale was made in good faith, for a consideration equal to the full value of such warrant, paid by the said Nathan C. D. Taylor to said widow and children; and thereupon and on said 11th day of October, A. D. 1848, the said Nathan C. D. Taylor became the owner of said land warrant by purchase, as aforesaid.

Defendants deny that the said Harriet A. Remson was ignorant of the said instrument of assignment when she signed the same, and deny that she signed the same believing it to be a receipt, and allege, that she at all times knew the nature of said assignment, and received her share of the consideration therefor. Defendants deny that the complainants and their predecessors in interest were ignorant of the assignment of said land warrant, or that said
46 land warrant had ever been issued, that the said Geo. W. Remson was entitled to a land warrant, and allege that they have at all times known that the said Geo. W. Remson was a soldier in the Mexican war and entitled to a land warrant, and severally knew that the land warrant in question at the time when the same was issued was duly and properly issued to them, the said widow and the said heirs of Geo. W. Remson, and defendants allege that from the date of the issuance of said warrant to the date of its assignment to Taylor the said widow and heirs had actual possession thereof; and defendants aver that they have no knowledge or information, sufficient to form a belief, as to the averments in said complaint, stating the manner and form in which they became acquainted with their pretended rights and claims in said real estate and hence deny the same.

Defendants further allege that the said Nathan C. D. Taylor, being the owner of said land warrant, duly located the same upon the said southwest quarter of section twenty-eight, township twenty-nine, north of range twenty-three west, being the said land in question; that the said entry was made on or about October 31, 1849, and that thereafter and on or about the 20th day of March, A. D. 1850, the United States, through its proper officers, duly issued to the said Nathan C. D. Taylor a patent for said lands, thereby conveying said lands to the said Nathan C. D. Taylor, in fee-simple, and that said patent was thereafter and on January 8th, A. D. 1852, duly recorded in the officer of the register of deeds of Ramsey

county, in the State of Minnesota, in Book "C" of Deeds on
47 page 288. That prior to the receipt of said patent, the land department duly and properly allowed the said Taylor to enter said lands, and duly accepted the said land warrant of said Taylor in payment therefor. That thereafter, and on or about the 28th day of April, A. D. 1854, the said Nathan C. D. Taylor made, executed and delivered to Charles D. Gilfillan, a bond for a deed, wherein and whereby the said Taylor contracted and agreed to sell said land to the said Charles D. Gilfillan, for the sum of six hundred (600) dollars, to be paid on or before August 1st, A. D. 1854; and on or about the said 28th day of April, A. D. 1854, the said Charles D. Gilfillan in pursuance of said contract purchased the said lands of the said Taylor, in good faith, without any knowledge of any claim thereto by said widow and children or heirs-at-law of the said George W. Remson, or of any other person or persons, and paid the said Taylor therefor six hundred (600) dollars, being then and there the value of said land; and the said Taylor then and there, by warranty deed, duly and properly executed, conveyed said land to said Charles D. Gilfillan, and the said deed was thereafter and on May 24th, 1854, duly recorded in the office of the register of deeds of Ramsey county, Minnesota, in Book "H" of Deeds on page 284. That thereafter and on or about the said 28th day of April, A. D. 1854, the said Charles D. Gilfillan sold the said land to one Henry McKenty for the sum of one thousand (1,000) dollars then and there by said McKenty paid to the said Charles D. Gilfillan, and the said Gilfillan then and there made, executed and delivered to the said McKenty, a warranty deed of said lands, which deed was filed
48 for record in the office of the register of deeds of Ramsey county, Minnesota, on May 25th, A. D. 1854, in Book "H" of Deeds, on page 297. That at the time said McKenty purchased said land he had no knowledge or notice of any claim thereto by said widow, children and heirs-at-law of the said George W. Remson, or any other person or persons than the said Charles D. Gilfillan. That thereafter and on the 22nd day of May, A. D. 1854, the said Henry McKenty sold the said land to Allen Pierse for the sum of two thousand (2,000) dollars, being the full value of such land, then and there by said Allen Pierse paid to the said McKenty, and the said McKenty then and there made, executed and delivered to the said Pierse a warranty deed of said land, which deed was recorded in the office of the register of deeds of Ramsey county, Minnesota, on May 29th, 1854, in Book "H" of Deeds on page 316. That the said Pierse purchased the said lands *bona fide*, and paid said consideration in good faith, without any knowledge or notice of the said pretended claims of the widow, children and heirs-at-law, of the said George W. Remson, or of any other person or persons, in and to said land. That thereafter, and on June 2nd, A. D. 1855, the said Allen Pierse, his wife joining therein, duly conveyed said lands to Pennock Pusey, by deed of warranty, and the said Pusey then and there paid to the said Allen Pierse, for said land, the sum of three thousand (3,000) dollars, the full value thereof; that said deed was duly recorded in the office of the register of deeds of Ramsey

county, Minnesota, on June 2nd, 1855, in Book "K" of Deed
49 on pages 670 and 671. That the said Pusey purchased sai
lands and paid said consideration without any knowledge c
notice that the said widow and heirs-at-law had or claimed any i
terest therein, or that any other person or persons so claimed an
interest therein, and relying upon the fact that the said land b
longed to said Allen Pierse. That thereafter, and on May 4th, 186
the said Pennock Pusey sold and conveyed said land to John W
Tatum, and on said day, by deed of warranty, duly conveyed sai
land to said Tatum, which said deed was filed for record in the offic
of the register of deeds of Ramsey county, Minnesota, on May
1860, in Book X of Deeds, on page 207. That the said Tatum the
and there paid said Pusey the sum of thirty-two hundred (3,20
dollars for said land, the same being the full value thereof, and s
purchased and paid for said land *bona fide*, in good faith, and with
out any knowledge or notice of any claim thereto by the widow an
heirs of said Remson or of any other person or persons; and tha
the said Tatum and all the other purchasers hereinbefore stated, s
purchased and paid full value for the same without any knowledg
or notice of any of the pretended facts set forth in the bill of com
plaint herein, which, it is claimed invalidates the said assignmen
That thereafter the said John W. Tatum died testate, and by hi
last will and testament the said land was devised to his three chi
dren, Samuel C. Tatum, John R. Tatum and Hannah Tatum, an
that the said will was duly admitted to probate in Ramsey county
Minnesota, on June 11, 1883. That the said probate cou
50 then and there had and acquired jurisdiction of the sai
estate and of the parties thereto.

Defendants admit and allege that by various and sundry mesn
conveyances from the heirs of said John W. Tatum, deceased, th
said land has been conveyed to, and is now held and owned by, th
various persons set forth in the said bill of complaint as defendant
therein, and as hereinafter more particularly stated.

Defendants allege that at the time said land was entered by th
said Nathan C. D. Taylor it was not worth to exceed $1.25 per acre
that the said land increased in value, from year to year, that th
same is now worth and of the value of upwards of $1,000,000 ove
and above the improvements thereon and is owned by several hun
dred innocent purchasers, these defendants, and has been absorbe
by and become a part of the city of St. Paul, and has for many
years lain within its corporate limits; that a large part of the sam
has been platted into additions to the said city of St. Paul, and such
additions subdivided into blocks and lots; is covered with many
houses and occupied by many actual residents; which said improve
ments are of the value of more than two million dollars; that fo
many years last past extensive and valuable improvements hav
been placed upon said land, the exact value defendants are unabl
to state, but crave leave to make proof; that the said defendant
and their grantors have been in the possession of said land, unde
their said titles openly and notoriously, have exercised act
51 of ownership over the same, and have paid the taxes an

assessments thereon for nearly forty years last past, to the amount of many thousand dollars, the amount thereof respondents are now unable to state; that said land has been sold from year to year and notoriously in the possession of the various purchasers, all with the knowledge of the said plaintiffs.

Defendants allege on information and belief that the said plaintiffs, their ancestors and predecessors, and the said widow and heirs-at-law of the said George W. Remson have, for many years last past, had full knowledge of the fact that said land was owned by said Taylor, his grantors, and the various persons claiming under said Taylor, as in the bill of complaint alleged; that the same was increasing rapidly in value; that a portion of a great city was located thereon; that elevators, railroad tracks and warehouses had been and were being erected thereon, and they aver that notwithstanding the complainants so possessed such knowledge, they did with such knowledge make no claim or demand whatever of any right to any of said property at any time before the filing the complaint herein.

Defendants further allege that by various mesne and sundry conveyances from the said heirs of John W. Tatum, which said conveyances were deeds of warranty, through various persons, the defendants herein have become the *bona fide* owners of and purchased certain portions of said land for full value, in every instance paid without any knowledge or notice of any of the facts upon which complainants claim or either or any of them. That hereto
52 attached, and made a part of this answer, is a schedule, marked Ex. A, showing the present owners of said land, the amount paid therefor by each of them and the value thereof, together with the value of the improvements thereon, which said improvements were made thereon in good faith by said owners or those under whom they claim and without notice of said pretended claim. That each one of said owners purchased said land in good faith and paid therefor the said sum without any knowledge or notice of the said pretended claims of the widow and heirs-at-law of the said George W. Remson, as in the bill of complaint set forth or otherwise, and received a warranty deed of said lands from their immediate grantors who were also *bona fide* purchasers for full value and without any such knowledge or notice, and defendants pray that they be allowed to make proof of their chain of title, and of the various deeds constituting the same, without setting the same up in this answer, owing to the great number thereof.

That the defendants each severally own and hold purchase-money mortgages and mortgages for money loaned on some certain portions of said land which said mortgages were given for a part of the purchase price of said various pieces of land and for money loaned thereon and which said mortgages are duly of record in the office of the register of deeds of Ramsey county, Minnesota. That hereto attached and made a part of this answer is a schedule of said mortgages marked Ex. "B," showing the maker of said mortgage, the date, amount and the description of the land covered by each

mortgage. That each one of said mortgagees received said
53 mortgages for the purchase price of said various pieces of land and loaned said various sums of money to said mortgagors and received said mortgage securing the same *bona fide* and without any knowledge of the pretended facts alleged in the bill of complaint as the basis of complainants' claim.

Defendants further allege that they and their immediate grantors and ancestors have been in open, notorious and continuous adverse possession of said land for more than twenty years before the commencement of this action, claiming under their aforesaid titles and that said plaintiffs, their ancestors, predecessors or grantors were not seized or possessed of said land or any part thereof within fifteen years before the commencement of this action.

For second and further defense the defendants allege that if the said defendants hold said land in trust for the plaintiffs herein, as alleged in the bill of complaint, more than six years have elapsed since said cause of action accrued, and before the commencement of this action, hence the same is barred by the statutes of the State of Minnesota, being the 7th subdivision of section six, of title two, of chapter sixty-six of the statutes of Minnesota.

And they further aver that the complainants and each of them and their ancestors had discovered and well knew all the alleged facts and circumstances set out in the bill and constituting their cause of action many years more than six years before the commencement of this action, and that those of the complainants or their ancestors who were infants when the assignment and patent were made to Taylor discovered and well knew all said facts
54 and circumstances upon attaining their majority and many years more than six years before the commencement of this action; and all the grandchildren of the said George W. Remson discovered and well knew all such facts and circumstances upon attaining their majority many years more than six years before the commencement of this action.

And for further defense they aver that the complainants and those under whom they claim did with such knowledge aforesaid refrain from making any claim to any of said property whether by action, demand, notice or otherwise, but with such knowledge acquiesced in the title of the defendants and those under whom such defendants claim, and that thereby the complainants and those under whom they claim have been guilty of such laches as in equity and good conscience ought to bar them from any relief whatever in this action.

And for further defense the defendants aver that long before the commencement of this action, and when they the said complainants and each of them were of and long past full age of majority the said complainants and each of them did with full knowledge of all the facts set up in their bill of complaint as constituting their cause of action, and of all the additional facts set up in this answer as constituting a defense in all respects ratify and confirm the assignment of said land warrant to Taylor; its deposit with and receipt

by the United States and the issuance of a patent thereon to said Taylor in his own right and free of any trusts whatever.

Which and similar acts of ratification have since been
55 frequently repeated, the last one being in and by the bill of complaint herein to which for such purpose these defendants crave leave to refer.

Wherefore defendants pray that they be hence discharged, and that they have judgment for their costs and disbursements herein.

C. H. BENEDICT AND
DAVIS, KELLOGG & SEVERANCE,
Said Defendants' Solicitors.

C. K. DAVIS, *Of Counsel.*

56 *Replication.*

These replicants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue and insufficient to be replied unto by these replicants, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all of which matters and things these replicants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

WM. C. MAYNE,
CLAPP, BRAMHALL & TAYLOR,
LUSK, BUNN & HADLEY,
Complainants' Solicitors.

C. W. BUNN, *Of Counsel.*

57 *Testimony.*

Meeting held at the office of the examiner, Henry R. Edmunds, Esq., No. 425 Walnut street, Philadelphia, Pa., at 10.30 o'clock, a. m.

Present: The examiner, Henry R. Edmunds, Esq.; William C. Mayne, Esq., for complainants; Frank B. Kellogg, Esq., for defendants.

ELIZABETH WETZEL, having been duly sworn, was examined as follows:

By the EXAMINER:

Q. Where do you reside now?
A. No. 417 Rihl street, Philadelphia.
Q. Are you married or single or a widow?
A. I am a widow and have been for 25 years, I guess, if not more.
Q. How old are you?
A. I was 78 last July. I think 1814 I was born, July 2d.

By Mr. MAYNE:

Q. You are the widow of whom?
A. Paul Wetzel.
Q. When were you married to Mr. Wetzel?
A. I can't recollect the month. It was in June or July, I don't know which. I can't remember the year. I was only married about two years and one month before he died.
Q. (Paper shown witness.) Is that your marriage certificate?
A. Yes, sir, this is it.

58 Complainants' counsel offers in evidence marriage certificate referred to, the same being marked "12-17-'92, Complainants' Ex. 1, H. R. E."

(Defendants' counsel objects to said certificate as incompetent, irrelevant and immaterial.)

By Mr. MAYNE:

Q. To whom were you married before your marriage with Mr. Wetzel?
A. Mr. Remsen. There may be a difference in there in regard to the name. We used to be called in a more German old-fashioned way; they would say "Remsden." About 25 years, I guess, or maybe more, they began to spell their names a little more particular. It was through an uncle that came on somewheres away off; he said that it was such an old country way, so they got to calling it Remsen. One part of the family goes by the same name yet, spelling it the old way of spelling. That is the correct name that is on the certificate there.

(Defendants' counsel objects to the foregoing testimony as to the spelling of the name and the explanation of the witness as incompetent, irrelevant and immaterial.)

Q. (Paper shown witness.) Look at that paper and tell me what it is.
A. I can't read it, but I know what it is by the looks of it. I got that paper from Anthony Atwood to produce it to the lawyer when I got my husband's wages and pension certificate. I got a copy from the record. Because the one I had when I was married was
59 cut in three pieces. It was nothing but a stiff piece of paper. And that is the copy I got when I was settling. It wasn't used.

(The paper referred to is marked "12-17-'92, for identification, A.")

Q. Where were you married to Mr. Remsen?
A. At the parsonage.
Q. What church?
A. St. George's.
Q. In what city?
A. Philadelphia, either Fifth or Sixth street, I don't know which, below Vine, I don't recollect.

Q. By whom were you married?
A. Manning Force.
Q. Who was Anthony Atwood?
A. He was in charge at that time the same as this man is in charge.
Q. Did you make application to him for this certificate?

Objected to as irrelevant and immaterial.

A. Oh, yes, I was told I would want it.
Q. And did he give you this?
A. Oh, yes, he gave me that.

Complainants' counsel offers in evidence said paper, the same being marked "12–17–'92, Compl'ts' Ex. 2, H. R. E."
Objected to as incompetent, irrelevant and immaterial.

Q. What was your maiden name?
A. Elizabeth Hopkins.
Q. When did Mr. Remsen, your husband, die?
A. I don't remember how long it has been. It is in the deaths though. You have that.
60 Q. (Bible shown witness.) Is this the book you refer to?
A. Yes, sir. It is in October some time. I think it is in that. If it isn't it is in the copy I have got.
Q. Is this the family Bible?
A. Yes, sir. That is the one my son has now. I have it on a slip, a piece of paper. You have it there the same, copied out of that.
Q. I see, under the caption of "Deaths" this: "George W. Remsen departed this life on the 11th day of October, 1847, in the 38th year of his age"?
A. That is it.

Defendants' counsel objects to counsel for complainants reading to the witness from the book, on the ground that the book is not evidence and is incompetent and there has been no proper foundation laid for its introduction.

Q. Where did your husband die?
A. In Mexico. I forget the name of the place. They did send me word, but I don't remember.
Q. What was the character of his business in Mexico?
A. Stone mason and bricklayer.
Q. What was the character of the business he was doing in Mexico?
A. He took a great notion to go.

By the EXAMINER:

Q. What was he doing there?
A. He was among the soldiers. He went among the soldiers. When they went from Philadelphia he went away with them. If he hadn't been among them I couldn't have drawed a pension, you know.

61 Q. Look at the handwriting in this book and tell me whether or not you know in whose handwriting it is.

A. The last part of it has been since his death. Mary's, my son, her husband, he wrote where his sister is dead, he wrote the most of it.

Q. The fore part under the marriages, who wrote this?

A. He wrote deaths and all, my son George.

Q. When did he make these entries in this book, your son?

A. I do not know. It has been years ago. I can't tell how long. Before he was married he wrote some—he wrote his sister's death before he was married. He wrote all pretty near that is in.

Q. How old was your son George when he made the first entries?

A. I can't recollect.

Q. About how old?

A. I couldn't begin to say because I don't remember, but he was not very old certainly.

Q. Was it before he was married?

A. Let me think. It was copied out of another Bible. I can't recollect whether it was just before he was married. If he was not married it was very soon afterwards. I would not like to be qualified that it really was after he was married or before.

Q. You say those entries were copied out of another Bible?

A. Yes, sir. John has the old part, it got all wore, that I had on paper.

Q. John has got that book, has he?

62 A. No, sir. I can't remember. It seems to me George, the last he wrote, was after his sister's death.

Q. Has John Wesley Remsen, your son, got the Bible from which these entries were copied?

A. He has got the paper, which is the same as this is. I had it wrote off of this. This was the first and George wanted a Bible, and this is his. It was my son's Bible.

Q. When you speak of George who do you mean?

A. I mean my son.

Q. Had he any middle name?

A. Yes, sir. George Washington Alexander Remsen, the one that wrote in this book. That is his wife that is here. He wrote it in it. It was before he was married he wrote the most of it, because his sister died before he was married.

By the EXAMINER:

Q. Did you say that these entries in this Bible were copied out of another book?

A. No, those were not. I had a copy taken off of them.

Q. Your copy was copied into another book?

A. Yes, sir; a copy that I have got myself is copied out of that. That is no copy.

Bible offered in evidence by Mr. Mayne.

Defendants' counsel object to the entries in the book and to the

book as incompetent, irrelevant and immaterial. There is no proper foundation laid for introduction of the memoranda in the book.

Offer of Bible withdrawn for the present by Mr. Mayne.

By Mr. MAYNE:

63 Q. How many children had you by George W. Remsen?

A. Six, five living and one dead. One died young. There were five surviving children.

Q. Did your son George Washington Alexander Remson marry?

A. Yes, sir; that is his wife out there.

Q. Whom did he marry?

A. Mary Jane Derbeshier.

Q. What was the name of your eldest child by George W. Remsen?

A. Harriet.

Q. Had she any middle name?

A. I think she had. She had when she was a child, but I do not know whether she ever gave it or not. Her middle name was Adams. That I wouldn't like to be positive of, for a great many don't think of the middle name always.

Q. Did she marry?

A. Yes, sir. She married Jacob Heyer.

Q. Do you know about when she married?

A. I can't recollect. It was somewhere about the time before the Mexican soldiers returned, but I can't recollect.

As — the testimony as to the marriage of Harriet, Mr. Kellogg objects unless the witness was personally *personally* present and knows of her own personal knowledge. That the testimony is incompetent as offered at the present time.

Q. Were you present at the wedding of your son George W. A. Remsen to Mary J. Derbeshier?

A. Yes, sir.

64 Q. Where was George W. A. Remsen married?

A. On Fifth street above George by the Reverend McCleary. He was the preacher then at the Sanctuary. I was at his house when they were married.

Q. Were you present at the marriage of your daughter, Harriet A. Remsen to Mr. Heyer?

A. No. They went from home to the minister's house. I knew they went to the minister's house.

Q. Did you ever visit your daughter, Harriet A. Remsen, and her husband?

A. Certainly. I was there and took care of her when she was sick at one time, or assisted in taking care of her.

Q. You have named two of your children. Will you name the others?

A. John comes after Harriet—he didn't—Mary Ann did, but she is dead, Mary Ann, John, Elizabeth, then George the next.

Q. Had John any other name?

A. Yes, sir; Wesley.

Q. Had Elizabeth any middle name?
A. Annie, I think. I think it is down Annie.
Q. Do you know the date of the birth of your daughter, Harriet A.?
A. Yes, sir. It was the day after New Year's. I can't think of the number. I know it was the day after New Year's.
Q. What year?
A. That is more than I can tell you. I can't remember that; it is too far back.
Q. Do you know about what year?
65 A. I can't recollect. I wouldn't like to say because I don't remember.
Q. What was the next child born to you?
A. That died. Her name was Mary Ann.
Q. Do you know when she was born?
A. She was born the 22d of February. I can't remember the year. I can't remember the years; it has been too long back.
Q. What was the next child?
A. Mary Ann. We gave her the same name.
Q. Do you know when she was born?
A. I think it was the 12th of August. I am not certain.
Q. Is she still living?
A. No. That is Laura and Emmie's mother, my grandchildren.
Q. Whom do you refer to as Laura and Emmie?
A. The two grandchildren of mine. It was their mother, Emma Hergesheimer, my grandchild, and Laura Beckman. Becket was her father's name. Laura Beckman is Mary Ann's child.
Q. What was the next child after Mary Ann?
A. John Wesley.
Q. Do you know when he was born?
A. No; I can't recollect. I think it was the 8th of the month, though I can't recall the month.
Q. Do you know the name of the next child after John Wesley?
A. Elizabeth.
Q. Do you know when she was born?
A. The 22d of February.
Q. Had she any middle name?
66 A. Annie. It is there I guess. (Bible.)
Q. Did you know Elizabeth Walcott Remsen?
A. No. If I understand you right, Elizabeth Walcott? You are right, that was her name, Walcott, she was called. That was it. I remember now. That was Lizzie's name. I couldn't understand you.
Q. What was the next child after this one?
A. George Washington, Mary's husband.
Q. Is that his full name?
A. Yes, sir; George Washington Alexander.
Q. Do you know when he was born?
A. I think it was a fall month. I am not sure.
Q. Is John Wesley Remsen living or dead?
A. He is living.

Q. Where does he reside?
A. Near Millsborough. I forget the name of the State. Maryland, I think. It is the lower part of Delaware anyhow, if it is not Maryland, but I think it is Maryland.
Q. Is Elizabeth Walcott Remsen living or dead?
A. She is dead.
Q. Did she leave any children?
A. No.
Q. Is George W. A. Remsen living or dead?
A. He is dead as far as we know.
Q. When did you last hear from George W.?
A. I can't recollect. I paid no particular attention to it.

Mr. Mayne offered in evidence, record of the marriage of George W. Remsen, and Miss Elizabeth Hopkins, and the births of George W. Remsen, Miss E. Remsen, Miss Harriet Remsen, Mary Ann
67 Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth Walcott Remsen and George Washington A. Remsen as contained in the Bible, and also the record as to the marriage of George W. A. Remsen to Miss Mary J. Derbeshire; and as to the deaths of Mary Ann Remsen, George W. Remsen and Annie E. Remsen.

Objected to by defendants' counsel as incompetent, irrelevant and immaterial, no proper foundation having been laid for the introduction of the entries.

Paper produced marked by the examiner "No. 3, H. R. E., 12-17-'92."

Q. Did you ever make any claim against the Government of the United States for or on account of your husband, George W. Remsen, deceased?

Objected to as irrelevant and immaterial.

A. You mean did I write to them for anything?
Q. Did you ever make any claim against the Government?
A. You mean, did I receive from the Government? I had a lawyer to get his wages and got his wages, what was coming to him, and I got a pension certificate, and the lawyer got a land warrant. I am not sure whether that is the name or not.
Q. Do you know what the number of that land warrant was?
A. No, sir. I didn't hear it read. I know nothing about it.

It is agreed by counsel that the certified copy which is produced by Mr. Kellogg as counsel for some of the defendants and by Mr. Mayne as counsel for the complainants, that the same be of-
68 fered in evidence and marked Complainants' Exhibit No. 4, the same not to be attached to the deposition, but to be produced at any time, and may be referred to in the index by witnesses with the same purpose and with the same effect as though the original was produced.

Q. When did you receive the land warrant from the Government?

A. I didn't have it at all. The lawyer got it and told me that he had it. The lawyer got it for me but I didn't have it.

Q. In consequence of what the lawyer said to you what did you do with respect to this land warrant?

A. My sister was dead. I went in the evening and signed it, but he was not there. He left it.

Q. Who went with you?

A. My daughter. I got her to go for company.

Q. Who was she?

A. Harriet Heyer; she went with me.

Q. What did you receive, if anything, for it?

A. I can't say the amount, but I can tell what he told me. I don't remember what it was.

Q. What did you do with what you got?

A. I spent it for the house, and I couldn't say whether it is $100 or what.

Q. Did you tell Harriet to sign it?

A. Yes, sir. I thought she ought to. I didn't know. It was me asked her to sign it. I said to the alderman, "Hadn't she better put her name on?"

Q. Did you tell her what it was?

A. No, I didn't tell anything.

69 Q. How old was Harriet at that time?

A. I can't say how old she was exactly, for I don't recollect.

Q. About how old?

A. I don't recollect at all. She must have been between seventeen and eighteen, somewheres along there. I can't say for sure. She might not have been quite that old. She might have been seventeen. I wouldn't like to say.

Q. Where were you living at that time?

A. In St. John street and Beaver, Philadelphia. That is next to Second street.

Q. Had you any of your children living with you at that time?

A. They were all living with me.

Q. Who all were living with you at that time?

A. They were all small but her. She was the biggest.

Q. Who were they? Name them.

A. John, Mary, Elizabeth and George and Harriet was there for some time. I don't know how long, a short time after she was married, not long.

Q. Living at your house with Mr. Heyer?

A. Yes, sir. She was living home when she was married but she was not home long. They were all small.

Q. Did you tell the children that you had signed this land warrant?

A. No, sir. I never told my children anything about my business. I was not that kind of a person. They were too young for me to go talking to them.

70 Q. Did you tell them you had received a land warrant from the Government?

A. No, sir. I never talked about it to any of them. I hadn't the mind people has got in these days to think anything about it.

Q. Have you any knowledge of the cancellation or this land warrant and a patent issuing thereon?

Objected to as irrelevant and immaterial.

A. No. If I understand it right, and I think I do.

Q. Do you know how much land the warrant called for?

A. No. I don't know what that called for, but I heard other ones talking, persons about there getting one hundred, and, I am not positive, but I think one hundred and sixty acres, I am not sure. I heard them talking afterwards, but I don't remember whether I am right or not. I didn't learn it from the paper. I heard different ones talking.

Q. Had you any knowledge where this land was located under this land warrant?

Objected to as irrelevant and immaterial and as hearsay.

A. No, sir; I never knew anything about it.

Q. You are one of the complainants in this suit, are you not?

A. I don't understand.

By the EXAMINER:

Q. Are you one of the parties to this suit?

A. It appears I am. I didn't expect to be in it.

By Mr. MAYNE:

71 Q. You have had read to you the matters the subject of this suit? When did you first learn them?

Objected to as irrelevant and immaterial.

A. The first of my knowing anything about it was, a gentleman came on and came to our house. Do you mean when I heard of it?

Q. Yes.

A. There was a gentleman came on. He went to my daughter-in-law's and she fetched him to our house. That was the first of my knowing about the land from the time it went out of my hands, having signed it, that was the first of my thinking or knowing. I didn't know anything about it, this man came and spoke about there being land.

Q. Did he tell you where the land was?

A. No. I asked him but he didn't answer me. I never knew where it was and never remembered the name where he came from until some few days ago one of them named the name and I said "That is the place that man came from."

Q. What did he want you to do?

A. He told me there was land coming to me that belonged to me, and I said "Where is it?" and he said something else, he didn't tell me where it was. I said I didn't know that there was. He went on talking and then he asked me something about him sell-

ing it—giving him power to sell or something. I don't remember what. I was very sick at that time. I was sick in bed.

Q. Did you give him any power to sell?

A. No. He asked about it, and I said, "I don't know anything about it," and I said, "You are a stranger to me and I am a stranger to you, and I would sooner know something further." Mary was present at the time.

72

Cross-examination.

By Mr. KELLOGG:

Q. (Exhibit No. 3, Bible, shown witness.) Can you read?

A. No, sir; I cannot see.

Q. Could you ever read?

A. Yes, sir. Some little. Not much though.

Q. Could you ever read writing?

A. No, sir.

Q. You do not sign your own name, do you?

A. No, sir. I just make my mark. When I receive any money from my granddaughters or anything I touch the pen.

Q. That is the way you always signed your name, just touch the pen?

A. Yes, sir. The lawyer told me when I went with my daughter to hold the pen.

Q. You never could read writing, could you?

A. No, sir.

Q. You never learned to read writing?

A. No, sir.

Exhibit No. 3 shown witness.

Q. You cannot read that writing in Exhibit 3, can you?

A. No, sir; I couldn't.

Q. You never could read that writing?

A. No, sir.

73 Q. Could you ever read that writing?

A. No, sir. I could not do it, but I saw it wrote.

Q. You would not know one man's writing from another, would you?

A. I don't know. Some I might and some I mightn't. But I know who wrote that.

Q. You say you know who wrote it?

A. Yes, sir.

Q. Who wrote it?

A. My son wrote part of it.

Q. (Referring to first page of Exhibit "3.") Who wrote the first page?

A. I wouldn't like to say positively, but I think he did. I think he wrote the whole of it. All but the last.

(Pages in Exhibit "3" marked 1 to 4 inclusive.)

Q. Do you know who wrote page one?

A. No; I can't say, but I think my son wrote the whole of it.

Q. You do not know whether he did or not; you cannot tell from looking at it?

A. I can't tell from looking at it. But I know no one else ever wrote anything in it but him. I think it is all alike. I can't say he wrote the whole of it.

Q. Do you wear glasses?

A. No.

Q. Could you read with glasses?

A. No, sir. I can't read writing.

Q. You do not knew then whose handwriting that is on page one.

74 A. I can say I knew who wrote it. I know when it was wrote in.

Q. What year was page one written?

A. I can't tell you that.

Q. Where was it written?

A. It was written in my house, but I can't tell you how long ago.

Q. Did you see it written?

A. I saw my son writing it in the Bible.

Q. You do not know then that he wrote on the first page of the Bible?

A. I can't say, but I think he did.

Q. You do not know for sure whether he did or not?

A. I am not positive, but I am most certain he wrote it all.

Q. Is the second page in the same handwriting as the first page?

A. It may be, but I can't tell, because this is so much darker than that. That is wore off more.

Q. Do you know when the second page was written?

A. No, sir.

Q. Do you know whose handwriting it is?

A. No, I can't say I do, without it is his.

Q. Do you know in whose handwriting the third page is in?

A. What is there; what is on it?

Q. I will read part of it. "Births. Miss Mary J. Remsen was born on the 18th of August, 1845."

A. What is the last?

Q. The last entry is Mabel Remsen.

75 A. That is not his handwriting.

Q. Is any of that page 3 his handwriting?

A. All I know, I know by the names. What is the last?

Q. The last is Mabel Remsen. One is Clara B. Remsen and George W. Remsen.

A. He might have written this, but he didn't write Mable.

Q. Anna E. Remsen and M. J. Remsen.

A. He wrote the first of them. The son and the other daughter, but he didn't write Mabel's because he was not home. I don't think he wrote hers.

Q. Did he write the Clara B.?

A. I think he did. His wife will know better.

Q. Did he write George W. Remsen?
A. I think so.
Q. You do not know positively?
A. I do not know positively. His wife will know better than I do.
Q. Did he write page 4; Mary Ann Remsen?
A. Yes, sir.
Q. George W. Remsen?
A. Yes, sir. If it is not his wife he wrote them.
Q. Anna E. Remsen and Anna E., daughter of G. W. A. and M. J. Remsen. Did he write those?
A. I can't say.
Q. The last entry on page 4, Anna E., daughter of G. W. A. and M. J. Remsen. Did he write that?
A. Yes, sir. He must have written that.
Q. Did you see him write that?
A. He wrote his sister's death.
76 Q. I will read the whole of the last entry on page four. "Anna E., daughter of G. W. A. and M. J. Remsen departed this life."
A. He wrote that.
Q. "On the 18th day of August, 1865, aged four months and three weeks."
A. That is his little girl.
Q. Did he write that?
A. Yes, sir; he wrote that.
Q. Did you see him write that?
A. I didn't see him but I know he wrote it.
Q. How do you know if you did not see?
A. I know. They told me.
Q. You did not see him write that?
A. I didn't see him write it, but I know he did put it in.
Q. Did he live with you at the time?
A. Yes, sir.
Q. At the time his little girl died?
A. No, sir. But I had the Bible at my house yet.
Q. Did you always keep this Bible at your house?
A. I had it at my house until the years when she first went to keep house. Not when she first went, because they went to the country and was boarding, when they came back home—I sent the Bible when they came back.
Q. When that little girl died they were not at home?
A. They were at its grandfather's when it died. When he came and got the Bible he wrote it in.
Q. You did not see him write that?
A. No, sir.
77 Q. All you know about it is what they told you?
A. I won't be positive of that. I won't be positive they told me anything about it. I know he told me he had put the little girl's death in the Bible. His sister's death and all this he wrote.

Mary knows more about her own family in regard to that than I do.

Q. All you know about it is you saw him writing in this book?

A. I saw him writing and I saw him writing his sister's death.

Q. How many years ago did he write it?

A. I don't remember how many years. She has been dead a good while. Before he was of age. I know he wrote that.

Q. Your daughter Harriet A. Remsen can read and write, can she not?

A. I guess so. No; I don't think she can. I don't think she can read writing.

Q. She signs her own name?

A. I don't know.

Q. Where does she live now?

A. She lives out of town. I can't tell you where. They have to send for her whenever she is wanted.

Q. Her name is Harriet Van Zandt?

A. Yes, sir. We had to go hunt her when we first wanted her.

Adjourned until 2 p. m.

2 P. M.

78 Present: Henry R. Edmunds, Esq., examiner; William C. Mayne, Esq., for complainants; Messrs. F. B. Kellogg and John C. Bullitt, Jr., for defendants.

Continuation of cross-examination of ELIZABETH WETZEL.

By Mr. KELLOGG:

Q. You first learned about where this land was you say from a gentleman who came to see you?

A. Yes, sir. I didn't understand then where it was.

Q. You understood this land warrant had been located but there was some land up there that this gentleman wanted you to give some papers for?

A. No, he did not.

Q. What did he want?

A. He told me there was a piece of land there belonging to me, that I had a right to. Didn't I know of it. I said "No, what was there; was there more land been given." He didn't answer the question.

Q. What do you mean by more land been given?

A. I thought more than what the land warrant had been for.

Q. That first land warrant?

A. Yes, sir. I asked the question, and I asked him where it was and he didn't answer me. He said he would intercede. Then he asked me to give him power. He came the second or third time.

79 I told him he was a stranger to me and I was a stranger to him, and I didn't know anything about it, but if there was anything I would see a lawyer about it. Some gentleman and him come one day, and he said he had to go away, but he didn't tell me where it was or no particulars about it.

Q. He wanted you to give him a power?
A. Yes, sir. I didn't do it, and I said I would get somebody here. Then there was a gentleman fetched Mr. Mayne.
Q. When was that?
A. It must have been about three years ago, as far as I know. I don't know. I can't say.
Q. It was in December, was it not?
A. Not right away. I don't know when. I was sick abed at the time.
Q. It was about three years ago?
A. I think it was about that time when this man was there.
Q. Was it in the winter?
A. Yes, sir. Going on towards Christmas. I wouldn't like to say.
Q. Mr. Mayne came with him, did he?
A. No, sir.
Q. Mr. Mayne came by himself?
A. I don't know whether he came the first time by himself. I don't remember.
Q. What did Mr. Mayne say to you about it?
A. Indeed, I don't recollect. My daughter-in-law was there and we just talked about it.
Q. Which daughter-in-law was that?
A. This one here.
Q. What is her name?
80 A. Remsen, my son's wife. She fetched that other man from her house.
Q. She came with that other man?
A. Yes, sir; he came to her house first.
Q. That man's name was Hendrickson, was it not?
A. I don't know. I can't tell you. I never knew his name.
Q. What sort of a looking man was he?
A. Tall slim man. He came with a small man the next time.
Q. Mr. Lehman?
A. I don't know. I can't remember the name. I can't tell you. I was suffering a good deal.
Q. He came with your daughter-in-law first?
A. She fetched him to see me. She knew nothing about this thing.
Q. She is the wife of George W. A. Remsen?
A. Yes, sir. He got their names out of the directory.
Q. You asked him if there was other land besides this land warrant?
A. Yes, sir. I don't know as I said land warrant. I said "Was there other land." I had had a piece and I didn't know whether there was any more or not.
Q. Did you tell him what you did with the piece you had?
A. Yes, sir. I think I did.
Q. You told him you had sold it?
A. Yes, sir. When I asked the question. That is all I know

about it. I can't remember every particular, what he said or what he didn't say.

81 Q. Did you tell him that you had sold the land that you got under the land warrant?

A. Yes, sir. I told him it was sold, and what was this. He didn't tell me.

Q. Did he not tell you it was the same thing?

A. No, sir.

Q. Did he not tell you what the land was?

A. No.

Q. Mr. Mayne told you, did he not?

A. I don't know as he did. He was attending to the rest of them. I don't know whether he did or not. I don't remember.

Q. You say he was attending to the rest of them. Did the rest of the heirs come to see you about it?

A. No, sir. My granddaughter was there one day when he was there, when Mr. Mayne stopped.

Q. What did you say to your granddaughter about it?

A. I just told her there was a man there said there was land, and I didn't know where it was or nothing about it.

Q. When you told this man about this land warrant that you had sold, your granddaughter was present, was she not?

A. No, sir.

Q. Was she not there?

A. No, sir.

Q. You say she came with him?

A. The daughter-in-law.

Q. She heard what you said about the land warrant?

A. I don't know. I was sick in bed.

82 Q. She was present in the room?

A. Yes, sir. She will say whether she was or not.

Q. Did they go into your room where you were?

A. Yes, sir.

Q. Did your daughter-in-law come there too?

A. She didn't live with me. She came in to see me. That is all I know about it. I don't know much about it nohow. I never made any inquiries or never knew what was going on.

Q. What else did you say to Mr. Hendrickson about having sold this land warrant?

A. I didn't say much to him nohow, for he was a stranger to me and I didn't know what he meant.

Q. Afterwards when Mr. Mayne came there you talked the whole matter over, did you not?

A. I don't remember talking much about it.

Q. Mr. Mayne came there in December or January shortly after this?

A. I never have been much among them.

Q. Did not Mr. Mayne come after that?

A. Yes, sir.

Q. He came to see you after that?

A. He came to see me and said this gentleman, I don't know who, told him to call there and see me.

Q. And you talked with him about it?

A. Yes, sir.

Q. Did you tell him you had sold this land warrant?

A. I told him a stranger had been there and told me there was land coming to me. I don't recollect.

83 Q. Did he tell you this was the land under that land warrant Mr. Mayne?

A. I don't remember anything, talking to Mr. Mayne much about it.

Q. Was your daughter-in-law ever there with Mr. Mayne?

A. I don't think she was.

Q. Were any of the other heirs there with Mr. Mayne?

A. I don't recollect. I don't recall of any one being there.

Q. Never from that day to this?

A. I don't recollect whether there were any there or not.

Q. Did not the other gentleman come see you about this?

A. They talked among themselves. Certainly they talked about it, about wondering what it was and they would go and see about it.

Q. And they did see Mr. Mayne?

A. Some of them. I don't know which of them talked to him.

Q. Were there not powers of attorney presented by Mr. Mayne about that time, about three years ago?

A. I can't answer that.

Q. Did not Mr. Mayne ask you to sign a power of attorney?

A. I told him to see about it for me.

Q. He asked you to sign a power of attorney, did he not?

A. I don't remember anything of that kind.

84 Q. Did he not ask you to sign some paper about it?

A. I don't remember him asking me to sign some paper.

Q. You told him to see to it for you?

A. Yes, sir. I don't remember I signed any paper. I don't remember signing any paper. I was so sick I didn't know much about anything when they talked about it. That is the way they all found it out though through that man.

Q. It was about three years ago that Mr. Mayne came to see you about this?

A. I should think it was. I wouldn't like to swear to it, because I don't recollect exactly. I know it was in the cool weather towards Christmas.

Q. And then Mr. Mayne saw the other children about it, did he not?

A. Yes, sir.

Q. And that was along in cold weather about Christmas or January following, was it not?

A. I don't know. I was not down to Mr. Mayne's office, for I was sick that time.

Q. You say you got about $100 for this land warrant; is that true?

A. I suppose so.

Q. That is your recollection?
A. Yes, sir. I can't say I got $100.
Q. Was it not $107?
A. He said there was $107 and he took out whatever there was.
Q. Who took it?
A. The lawyer.
85 Q. What was his name?
A. Mr. Small. He has been dead a good many years now.
Q. He is the one who represented you?
A. He was the one who did my business.
Q. He was the one who got this land warrant for you?
A. Yes, sir.
Q. When you went there to sign this paper you sold it at that time?
A. I don't know when he sold it.
Q. He sold it for you?
A. Yes, sir.
Q. You went there to sign the paper?
A. I went to the squire's and signed the paper.
Q. That was for the purpose of selling it?
A. Yes, sir. I was away. I was not here.
Q. That was for the purpose of selling the land warrant?
A. Yes, sir.
Q. That is the land warrant you said you thought entitled you to one hundred and sixty acres of land?
A. Yes, sir. That is what I heard. I didn't hear whether it was or not, but I thought that was what they were getting.
Q. You supposed that is what you were getting?
A. Certainly.
Q. You went to the lawyer's office to sign this paper to sell it and get the money for it?
A. To the squire's office. I didn't know much about anything those days. I was young.
86 Q. That is what you went there for, to sign this paper?
A. Certainly, I took his advice.
Q. He sold it for you?
A. Yes, sir.
Q. You signed the paper so it could be sold?
A. Certainly, I suppose so. I signed a paper.
Q. He told you you got $107 for it?
A. Yes, sir.
Q. He took out something for expenses?
A. I don't know what he took out.
Q. You said this morning you got about $100.
A. I didn't say I got $100. I said I couldn't say how much.
Q. You got whatever there was less the expenses, did you not?
A. Yes, sir.
Q. And you spent it for the family, did you?
A. I spent it to live on.
Q. You and the children?

A. Yes, sir. The children were all little.
Q. They were living with you?
A. Yes, sir. They were all with me.
Q. You say that Harriet went with you?
A. Yes, sir.
Q. And she signed the paper too?
A. Yes, sir.
Q. You took her from your house right there to the squire's office?
A. I took her with me for company.
Q. From your house?
A. Yes, sir.
87 Q. She was living there with you at that time?
A. She was there that evening. I don't think she was staying home at that time.
Q. Where was she staying?
A. They were boarding at her husband's mother's I think.
Q. She was not married at that time?
A. Yes, sir; she was married then.
Q. What year was she married in?
A. I can't say, but she was married before that.
Q. You are sure of that?
A. That is her name. Her name is not Remsen on the paper. Her name is Heyer.
Q. This is the way you signed it, is it not, "Elizabeth Remsen for myself and as guardian of the minor children of George W. Remsen, deceased"?
A. I didn't hear it read. I didn't hear nothing what was on it.
Q. You signed the paper?
A. I made my mark when the man showed me. He didn't read it.
Q. Harriet signed it as Harriet A. Remsen, did she not?
A. No.
Q. That is the way it appears on the paper, Harriet A. Remsen.
A. I thought she signed it Heyer.
Q. She signed as Harriet A. Remsen?
A. I didn't know.
Q. If she signed it Harriet A. Remsen she was not married?
A. I can't say. I don't know what it means.
88 Q. She signed it as Harriet A. Remsen.
A. I don't think she signed it with that name.
Q. She did.
A. I never knew it.
Q. If she did sign it as Harriet A. Remsen you do not claim she was married then, do you?
A. I can't say. I thought she was married when that was signed.
Q. You may be mistaken. It is a good many years ago. It is signed Harriet A. Remsen. If she signed that name Harriet A. Remsen she was not married?
A. No, but I think it is a mistake somehow.
Q. It is a good many years ago, is it not?

A. I know it is. I don't remember much about it. For I never give such things a thought. It was gone and I thought no more about it, I wouldn't bother with it.

Q. It was gone and you thought you had your money for it?

A. I didn't think so much of that much money. It was not such a great sight.

Q. After it was sold you did not think it belonged to you and paid no attention to it?

A. I wouldn't have paid no attention anyhow if they hadn't given it to me, for I wouldn't have known.

Q. You may be mistaken about Harriet being married at that time. Is not that so?

A. I don't think I am. I don't know what it is doing there Remsen. I can't say. She has got to answer for that herself.

89 Q. You would not say for sure whether she was married at that time or married afterwards?

A. No; I can't say. Because I thought think she was.

By Mr. BULLITT:

Q. What is your age now?

A. I was seventy-eight last July.

Q. Your recollection concerning these events is rather incomplete, is it not, and very dim? Your memory at the present time is somewhat imperfect concerning these old events?

A. I can't recollect numbers and years and dates away back. I have no recollection. I have so much to contend with, with my inward weakness for some years. That is the reason I paid no attention to this.

Q. Your memory then at the present time concerning these transactions——

A. My memory is good. I can call up many things.

Q. You can call up a great many things and other things you forget?

A. Yes, sir. I would not forget, if it is anything that I know that has happened then I can be convinced of what it is. I never expected to have anything to do or bother about it, because I didn't expect to be here. I expected to have been in another country before this time, the way my health has been.

By Mr. KELLOGG:

Q. Your husband was in the Mexican war, was he not?

90 A. Yes, sir.

Q. Was he in the army at the time he died?

A. Yes, sir.

Q. That was in 1847?

A. I don't recollect at all.

Q. About how old was John Wesley Remsen at the time you signed this paper?

A. I don't know. He must have been eight or ten, somewheres along there.

Q. He was older than that, was he not?

A. No, sir.

Q. He was twenty-one years of age in 1858, was he not?

A. I don't know. I don't remember. He could not have been more according to the other children.

Q. Your children knew that your husband was a Mexican soldier, did they not?

A. They all knew he was a Mexican soldier. That was about all they did know.

Q. They all knew when they grew up your husband was in the Mexican war?

A. Yes, sir. They never talked about such things as that.

Q. They talked about his being a soldier?

A. No; just the two little boys, but they were not that way inclined.

Q. They knew your husband was in the Mexican war?

A. They never talked much about it. I never was one to talk to my children about such things.

Q. They knew he was a Mexican soldier?

A. I can't say they all knew.

91 Q. Which ones did know?

A. I don't know. I never heard them talking about it nohow, only when the soldiers came home they went to see them. I took them to a house, a friend of mine up at the corner and looked at them, but I can't say anything about what the children knew. They never talked about it.

Q. You say you took the children to see the soldiers when they came home?

A. The little ones, I took them up to the corner. We only lived in the next street where they passed.

Q. What children did you have at that time; Mary Ann?

A. Mary Ann.

Q. John Wesley?

A. John.

Q. Elizabeth?

A. Yes, sir.

Q. And George?

A. Yes, sir. They were all little bits of things.

Q. John Wesley was a boy about fifteen years old at that time?

A. No; he was not. Mary Ann was older than he, and she was not that. She was not more than fourteen if she was that. She could not have been a bit more, because there came Elizabeth and George. John Wesley was not over ten, if he was that.

Q. After the war you applied for a pension, did you not?

A. Yes, sir.

Q. And also for his pay, did you not?

A. Yes, sir.

92 Q. And then for this land warrant?

A. They got that without asking me anything about that.

Q. They got that for you?

A. Yes, sir.

Q. You knew they got it?

A. Yes, sir.

Q. You talked with your children about these things, did you not?

A. No, sir.

Q. Never said anything about it?

Q. I never talked to any of my children about any such subjects. I never made a practice to do it.

Q. Did you not talk to your children about your property?

A. No, sir. I never considered I had any. I never talked about it. I put my whole soul on raising my family, did the best I could.

Q. Did you not ever tell them about having got a pension?

A. Those that were old enough to know it knew I got money. I never told them.

Q. The older ones heard you got a pension?

A. Certainly.

Q. You say they knew you got money?

A. I never made a practice of telling my children my business.

Q. How did they know you had money?

A. They didn't trouble themselves.

Q. You say they knew you had money?

A. Certainly they knew I had mon-y. I never told them where I got it.

93 Q. You say they knew you got a pension?

A. Some of them did. As they got older they knew I drew a pension.

Q. They knew you got some money from this land warrant?

A. No, sir; they didn't know anything about the land warrant. The children didn't know anything about it. They never heard me talking about it, for I never talked with them. It was just something that had come and went, and there is no attention paid to it.

Q. Harriet can say, I suppose, because she was old enough?

A. I don't know. She never talked about it if she did.

Q. She went with you and signed the paper?

A. Yes, sir. She signed the paper but it was not read to her.

Q. You do not know whether she read it or not?

A. Yes, sir; I knew I stood there and she made her mark.

Q. She signed her name, did she not; she did not make any mark?

A. I don't know what she did. She was standing there.

Q. You just asked her to sign the paper, did you?

A. I spoke to the alderman. I said if she needed to sign the paper. He said he didn't think it was worth while, but she could if she wanted to, and she signed it.

Q. Was that all that was said?

A. Yes, sir.

94 Q. You did not tell her what it was?

A. No, sir; I talked nothing about it.

Q. When you went over with her you say you took her for company?

A. So I did.

Q. Did you not tell her what you were going there for?

A. I told her I was going on business. I was going to start next morning to Delaware, my sister was laying dead and I had other things, and worried about my sister, and I didn't talk about it.

Q. You talked with her about what you were going there for?

A. I was going next day to start down to the country.

Redirect examination.

By Mr. MAYNE:

Q. Do you know this lady? (Mary Jane Remsen.)

A. Yes, sir.

Q. Who is she?

A. My daughter-in-law.

Q. What is her name?

A. Mary Jane Remsen.

Signature waived.

ALFRED J. FORTIN, having been duly affirmed, was examined as follows:

By Mr. MAYNE:

Q. What is your position?

95 A. First assistant clerk in the orphans' court of Philadelphia county.

Q. Have you any records of the estate of George W. Remsen, deceased, in your office?

A. The only record I can find is a petition in the matter of the estate of the minor children of George W. Remsen, deceased, petition for the appointment of a guardian. It was filed on the 6th of October, 1848. It has endorsed on the back "Mrs. Elizabeth Remsen, guardian, without security."

Q. Will you furnish us a certified copy of that record?

A. Yes, sir.

Q. Have you made search of the records of your office subsequent to October 6, 1848?

A. I have.

Q. Can you state whether or not there is any other record or proceeding of any character in reference to the estate of George W. Remsen, deceased, since October 6, 1848?

A. I made a very thorough examination in the indexes to the dockets, and I did not find any record with the exception of the one just produced of any kind or nature.

Cross-examination.

By Mr. KELLOGG:

Q. How long have you been a clerk in that court?

A. Since 1859.

Q. You say you made search for further records in this matter?

96 A. Yes, sir.

Q. I suppose it is not uncommon that papers in connection with old estates in forties, 1849 and 1850 are lost?

A. The original paper may be lost, but there is always a docket entry showing some paper having been filed. The docket itself shows the record of the filing.

Q. This is only the paper itself. You have not produced the docket?

A. No, sir. The docket just merely states what is on that paper.

Q. It is customary to enter these papers in a docket, is it?

A. To make an extract of it on the docket; yes, sir.

Q. Then the papers are filed away?

A. Yes, sir.

Q. You cannot say whether there were any other papers in this case or not; you do not know of your own knowledge anything about it?

A. No. I only know from searching the index and the docket.

Q. You have not found any other papers?

A. None at all. Either in the name of the minors or in the name of the decedent or the guardian. I searched all the names.

By Mr. MAYNE:

Q. Will you produce the docket?

A. Yes, sir. It is a great big book. I can bring it if you want me to bring it down.

97 Production of the docket waived. Certified copy under the acts of Congress of all abstracts pertaining to this case to be furnished.

If Mr. Bullitt upon his arrival desires to ask any further questions on cross-examination the witness will be called.

Signature waived.

SAMUEL COLEMAN, having been duly sworn, was examined as follows:

By Mr. MAYNE:

Q. Where do you reside?

A. I live at 1838 North Thirteenth street, Philadelphia.

Q. Do you know this lady? (Pointing to Mrs. Elizabeth Wetzel.)

A. Yes, sir. She is a sister-in-law of mine.

Q. How long have you known her?

A. That is going back a great ways. Fifty-seven years, or maybe a little longer.

Q. Did you know her as a maiden lady?

A. Yes, sir.

Q. What was her maiden name?

A. Hopkins.

Q. What was her first name?

A. Elizabeth.

Q. Were you acquainted with George W. Remsen?

A. That is the son.

Q. Do you know Mr. George W. Remsen?
A. I knew him when he was here in town. I have not seen him for a number of years.
98 Q. Who was he?
A. He was a son of hers.
Q. Did you know another George W. Remsen?
A. I only knew the one. I didn't know his name by George W. I knew it George. I knew no middle names.
Q. You married this lady's sister, did you?
A. Yes, sir.
Q. Do you know who this lady (Mrs. Wetzel) married?
A. She married George Remsen.
Q. Were you at the marriage?
A. No, sir.

Counsel for defendant- will move at the time of the trial that the testimony of this witness with reference to the marriage will be stricken out on the ground it is hearsay and incompetent.

Q. Did you ever visit this lady (Mrs. Wetzel) after her marriage?
A. No, sir. She visited at our house but I never visited at their house.
Q. Did she ever come in company with Mr. Remsen?
A. No, sir; not to my knowledge.
Q. She never came there with Mr. Remsen?
A. Not to my knowledge. I don't recollect anything of that kind. I was away pretty much all the time through the day and I don't know hardly who was there and who was not. All my time was taken up out of doors.
Q. Is this George Remsen living?
A. That is more than I can tell you.
99 Q. I mean the one that you say married this lady.

Defendants' counsel object to the testimony as incompetent, the witness having said that he never knew but one George Remsen, and that was the son of the lady present.

Q. Did you know whether or not this lady ever married?
A. Not any more than their living together. That is all I know.
Q. Living together with whom?
A. George Remsen and her.
Q. The other George Remsen that you referred to, who was he?
A. That is the son.

Cross-examination.

By Mr. KELLOGG:

Q. You say you never knew but one George Remsen?
A. I knew her husband, or the one she lived with, her husband of course, I was not at the marriage, and the son. That is the only two I ever knew.
Q. You have seen her husband Remsen?

A. Yes, sir; I saw her husband several times.
Q. Where were they living?
A. I don't know. I can't say, hardly, where they lived.
Q. In what city?
A. In the city of Philadelphia.
Q. You were not at the marriage?
A. No, sir.
Q. Were you ever at their house?
100 A. No, sir.
Q. Was he ever at your house?
A. I don't know. That I can't tell you. I was away all through the day. In the daytime I was away altogether. Night-time I was generally about home, but I don't recollect of ever knowing him to come to the house. He may have been to the house for what I know.
Q. You never were at their house when they were living together?
A. No, sir.
Q. All you know about their living together is what somebody told you, is it?
A. I have seen the children of course. They came backwards and forwards to the house.
Q. What years was this?
A. That is more than I can tell you. It has been a good many years ago.
Q. What year do you first remember of seeing George W. Remsen, the one you claim to be her first husband?
A. I can't tell you exactly the years. It must be fifty-five years ago, if not more.
Q. That would be 1837.
A. Yes, sir.
Q. Before that did you know him?
A. I can't say. I can't recollect the dates.
Q. You say you knew her son, George W. A. Remsen?
A. I don't know what his middle name was. I knew her son George.
Q. How many years since you have seen him?
101 A. I guess that was in about 1862. Between 1862 and 1865, as near as I can come to it.
Q. That is the last you saw of him?
A. That is the last I saw of him.
Q. Do you know where he is now?
A. I couldn't tell you anything about him. The last I knew of him I met him at the navy yard in Philadelphia. We had a talk together there. He was then in business for himself. We had a talk there. That was the last I ever saw of him.

(Reserving the right to further cross-examination by Mr. Bullitt, counsel agreeing to reproduce the witness at any time that counsel for defendant wants him, the cross-examination is closed.)

By Mr. MAYNE:

Q. Do you know what ever became of George W., the son?
A. No, sir. I never saw him from the time I met him at the navy yard.

Signature waived.

GEORGE W. F. GRAFF, having been duly affirmed, was examined as follows:

By Mr. MAYNE:

Q. Where do you reside?
A. 324 New street, Philadelphia.
Q. What is your profession or calling?
A. Minister of St. George's Methodist Episcopal church.
102 Q. How long have you been stationed there?
A. Since March, 1891.
Q. Have you any record of the marriages celebrated by the ministers of that church?
A. I have them all.
Q. Where is the record kept?
A. In the vault of the church.
Q. Where did you get the book you have in your hand?
A. From the vault of the church.
Q. Please refer to that book. Is there any record there of the celebration of the marriage of George W. Remsen and Elizabeth Hopkins?

Objected to as book is the best evidence.

A. I have the book here. (Referring to book.) There is a record of the marriage of George Remsen and Elizabeth Hopkins, May 19, 1830, by Reverend Maning Force. This is the book.
Q. Have you any objection to that book being taken to St. Paul?
A. Yes, sir.
Q. Look at this paper and tell me what that contains.

Objected to witness stating the contents of paper as incompetent.

Q. Is your signature attached to that paper?
A. Yes, sir.
Q. Is the handwriting there in your own proper handwriting?
A. Yes, sir.
Q. The references there were taken from what?

Objected to as incompetent.

103 A. Taken from the original record of St. George's Methodist Episcopal church concerning the marriage of George Remsen to Elizabeth Hopkins.

Paper offered in evidence.
Objected to as incompetent.
Paper produced marked "No. 5, H. R. E."

Cross-examination.

By Mr. KELLOGG:

Q. When did you first see this record that has been introduced in evidence?
A. Do you mean the book or just that particular record?
Q. That particular record and the book.
A. The day that the record was made.
Q. Were you present at that marriage?
A. I do not mean the record in the book. I mean the day I made the record.
Q. Tell me the day you first saw this book and the entry in there that you have testified about.
A. You mean as far as the particular case is concerned?
Q. When did you first see this book?
A. Some months after I was stationed there.
Q. When was that?
A. I was stationed there in March, 1891.
Q. That was the first time you ever saw the book?
A. Yes, sir.

Page of book containing the record referred to marked Exhibit "6" for identification.

104 The WITNESS: This is the only and original record of the marriages in that church between 1816 and 1845.

By Mr. MAYNE:

Q. To whom does that record belong?
A. To the church.
Q. Is the church incorporated?
A. Yes, sir.

By Mr. KELLOGG:

Q. You do not know that that is an original record. You do not know when these entries were made or anything about it?
A. To the best of my knowledge and belief it is the original record.
Q. You do not know anything about it personally of your own knowledge?
A. No, sir.
Q. You do not know when these entries were made?
A. No, sir.
Q. You do not know but what that book may be a copy of another book?
A. No, sir; as far as my knowledge goes. I believe it to be an original record.
Q. You yourself do not know anything about whether that is an original record or not or whether that is copied from some other book, do you? Do you know of your own knowledge?
A. This book is placed in my hands as the original record of marriages between those dates.

Q. Who told you they were the original records?
A. My board of trustees placed them in my hands as the original record.
105 Q. You know the difference between hearsay and your own knowledge?
A. Certainly.
Q. All you know about it is what somebody told you?
A. Yes, sir.
Q. You do not know of your own knowledge whether that is an original record or not, do you?
A. No, sir. I believe it to be.

Signature waived.

It is agreed between counsel that this testimony may be taken by stenographer, three copies made, one for the defendant-, one for the complainants, and original for the examiner, and the expenses to be taxed as costs in the case.

Adjourned until Monday, December 19, 1892, 9.30 a. m.

MONDAY, *December* 19, 1892—9.30 a. m.

Present: Henry R. Edmunds, Esq., examiner; William C. Mayne, Esq., for plaintiffs; Messrs. Porter, Kellogg and Bullitt for defendants.

MARY J. REMSEN, the witness who was recognized by Mrs. Wetzel as her daughter-in-law, having been duly sworn, was examined as follows:

By Mr. MAYNE:

106 Q. Where do you reside?
A. 2504 Howard street, Philadelphia, Pennsylvania.
Q. How old are you?
A. I am in my forty-eighth year.
Q. When were you born?
A. I was born the 18th of August, 1845.
Q. Mrs. Wetzel identified you as one of her daughters-in-law?
A. Yes, sir.
Q. Were you married to one of her sons?
A. Yes, sir.
Q. Which one?
A. George W. A.
Q. When?
A. On the 19th of June, 1864.
Q. Is your husband still living?
A. I don't know. I don't think he is.
Q. When did you last see him or hear from him?
A. The last time I saw him was on the 30th of May, 1871.
Q. Where?
A. In Philadelphia.
Q. When did you hear from him after that?
A. I couldn't give you the dates, but the last I heard from him was about three months after that, after he went away.
Q. How do you fix that time?

A. I know by my youngest child's age. It was about three months old.

Q. Which child is that?

A. That is Mabel.

107 Q. When was she born?

A. The 28th of May, 1871.

Q. Where did you hear from your husband at this time?

A. He was in Washington at the time I heard from him. I received a telegram saying that he would be home in two weeks.

Q. Washington, District of Columbia?

A. Yes, sir.

Q. You have never heard from him since then?

A. No, sir.

Q. You have no knowledge of any character where he went to after he left you?

A. No, sir. I wrote where he told me to write and all my letters were returned unanswered.

Q. Where did he tell you to write?

A. To Des Moines, Iowa, post-office. I always put on the back of my letters to return in so many days unless called for, and they were all returned.

Q. Where were you married?

A. I was married at Sanctuary parsonage in Philadelphia on Fifth street.

Q. When?

A. On the 19th of June, 1864.

Q. Have you any other children besides Mabel?

A. Yes, sir; three others.

Q. What are their names?

A. The first one was Anna E. She was born 24th of March, 1865. She is not living. She died August 18, 1865. The next was George W. He was born July 2, 1866. He is still living.

108 He is living on Bouvier street, 2317, I believe is the number. He is married.

Q. Whom did he marry?

A. Sallie Shaw. I can't remember the date of his marriage.

Q. Were you present at his marriage?

A. Yes, sir; I was present at his marriage, but I can't remember the date.

Q. Where was he married?

A. He was married in the Church of Incarnation. I think that is Eighteenth and Jefferson. I never was in the church but once, and I can't remember just where it is.

Q. Do you know about the year he was married?

A. I think he was married in February. I think next February will be five years. I think it was the 8th of February.

Q. Were you present at the marriage of Mr. and Mrs. Beckman?

A. No, sir.

Q. Do you know when they were married?

A. I remember, but I don't remember the year or anything about

it, but I remember the circumstances. I couldn't tell you any dates at all. I know where they were married.

Q. Were you present at the marriage of Mr. and Mrs. Hergesheimer?

A. No, sir.

Q. Do you know when they were married?

A. No, sir; I don't know any dates. I was to see them a few days afterwards, but I couldn't tell the date at all.

109 Q. Were you present at the marriage of John Wesley Remsen?

A. No, sir; he was married before I was.

Q. Have you been introduced to his wife?

A. Yes, sir.

Q. What is her name?

A. Her name was Martha Moore.

Q. You have seen the Bible that was offered in evidence here, have you not?

A. Yes, sir.

Q. Are you familiar with the entries in that Bible as to births, marriages and deaths?

A. I have seen them all. I entered some of them myself.

Q. When did you first see those entries in the Bible?

A. When I was first married the first entries were made in. All that my husband made were made at the time I was married.

Q. Was your mother-in-law married to Mr. Wetzel at the time of your marriage?

A. No, I don't think she was. I think she was married a few days after I was married. It was a very few days I think.

Q. Where was your mother-in-law living at that time?

A. She was living on Marlborough street Philadelphia.

Q. Were any of her children living with her at that time?

A. Only my husband.

Q. Are you acquainted with Harriet A. Van Zant?

110 A. Yes, sir.

Q. Were you present at her marriage with Jacob Heyer?

A. No, sir. She was married before I knew her. Before I knew the family.

Q. Did you ever meet Mr. Heyer?

A. No, sir.

Q. Had you ever heard of the marriage in the family of Jacob Heyer to Harriet A.?

Q. Yes, sir.

Q. Mrs. Wetzel, your mother-in-law, in her testimony made some reference to a gentleman by the name of Hendrickson and a gentleman by the name — Mr. Lehman coming with you up to see her?

A. Yes, sir.

Q. Was that true?

A. Yes, sir.

Q. What was the nature of their business with you?

A. They came on to look for the heirs of George W. Remsen, who died in the Mexican war.

Q. Did they tell you what claim the heirs had?
A. No, sir. They didn't give me any information at all, only there was land out there that belonged to those heirs.
Q. What did he want you people to do, if anything?
A. He wanted us to give him a power of attorney.
Q. Did you give it to him?
A. No, sir.
111 Q. Have you any knowledge when you first met me?
A. No, sir; I haven't. I didn't make any date of it.
Q. I did disclose to you, did I not, the location of the land, the subject of this suit?
A. Yes, sir.
Q. That disclosure was made when?
A. In August, 1891.
Q. Prior to that had you known anything about this land?
A. No, sir; only what this Mr. Hendrickson told us.

Mr. MAYNE: I reserve the right to interrogate this witness on the entries in the Bible as soon as we get possession of it.

Cross-examination.

By Mr. KELLOGG:

Q. Mr. Lehman and Mr. Hendrickson came to see you, did they?
A. Mr. Hendrickson came to see me.
Q. Did Mr. Lehman come to see you afterwards?
A. No, sir.
Q. Did you ever see Mr. Lehman?
A. Yes, sir. I met him at my mother-in-law's the first time.
Q. How long after Mr. Hendrickson was there did you see Mr. Lehman?
A. It was not very long afterwards. I could not give you the date. It was inside of a month.
Q. Was it not three years ago this month?
112 A. I couldn't remember the date. I didn't make any date of it at all.
Q. It was several years ago, was it?
A. It has been over two years ago since Mr. Hendrickson came on. I could not fix any date.
Q. As a matter of fact, you recollect it was in December about three years ago?
A. I could not remember the month. I know it was over two years ago. I don't remember how much. It was between two and three since we first heard or saw Mr. Hendrickson.
Q. He came to your house?
A. Yes, sir.
Q. Where were you then living?
A. 2504 Howard.
Q. How long had you lived there?
A. We have lived there six years last October.

Q. You went with him to your mother-in-law's?
A. No; I met him at my mother-in-law's.
Q. By appointment?
A. Yes, sir. I gave him her address and went over. I don't suppose I went there by appointment. I went over and he was there.
Q. Your mother-in-law said you were present at her interview with Mr. Hendrickson?
A. Yes, sir.
Q. That is the fact?
A. Yes, sir.
Q. You heard their conversation?
A. Yes, sir.

Q. You heard your mother-in-law state, as she testified yes-
113 terday, that the only land warrant she ever knew she had was one that she sold, a Mexican land warrant?

A. Yes, sir.
Q. You heard that?
A. Yes, sir.
Q. And he said that she had some land up in Minnesota, did he not?
A. I wouldn't be sure what State, but he said it was in the West.
Q. It was in St. Paul, was it not?
A. No, sir; he didn't say St. Paul.
Q. Did he not say where he came from?
A. I think he said he came from St. Paul.
Q. He wanted Mrs. Wetzel to sign a power of attorney, did he?
A. Yes, sir.
Q. Did he have it drawn?
A. I do not think so.
Q. Who did he want appointed the grantee in the power?
A. He didn't say that I remember.
Q. Mrs. Wetzel told him she never knew of having any land or land warrant except this one Mexican land warrant?
A. Yes, sir.
Q. And that she had sold that a good many years ago?
A. Yes, sir.
Q. And that was a warrant coming to herself and children because of the services of her husband in the Mexican war.
A. Yes, sir.

114 Q. She told him that?
A. Yes, sir.

Q. She told him her husband died in the Mexican war, did she not?
A. Yes, sir.
Q. She told him she sold that warrant a great many years ago, did she not?
A. Yes, sir.
Q. Did she not tell him that the business was done by one Gen. Small?

A. Yes, sir.

Q. And that she went to his office and signed the papers to sell the warrant?

A. I don't remember where she said she signed them, but she said she signed the papers.

Q. You knew that Mr. George W. Remsen, the father of these children, was a Mexican soldier, did you not?

A. Yes, sir.

Q. How many years have you known that?

A. I cannot tell you how long. Some time after I was married. I could not tell you how long.

Q. From whom did you learn that?

A. I suppose from my mother-in-law or husband, I couldn't tell you which.

Q. Your husband knew it?

A. I suppose he knew his father was a soldier.

Q. You have heard him talk about his father being in the Mexican war?

115 A. I never heard him talk much about his father, for he was very young when his father died. His mother said more than he did. He very seldom ever spoke about it.

Q. Did he ever speak about it?

A. I suppose he has.

Q. You have heard it discussed in the family, have you, that he was a Mexican soldier?

A. Yes, sir; I have heard it spoken of.

Q. Did Mrs. Remsen also state to Mr. Hendrickson at that time that she got this lawyer to get her the pay of her husband from the Government?

A. I could not remember that.

Q. And that she got a pension?

A. Yes, sir. I knew she got a pension from the Government. She was drawing it when I was married.

Q. And from whom did you learn that?

A. I learned it from her.

Q. Did you live with her in the same house after you were married?

A. Yes, sir; for a short time.

Q. About how long?

A. I should not think over a couple of months.

Q. You knew then she had a pension from the Government?

A. Yes, sir. She didn't have it long after I was married; she gave it up right after. She was married soon after I was.

Q. Did she also state to Mr. Hendrickson that Harriet A. Remsen had gone with her and signed this paper at Gen. Small's?

A. I could not remember that.

116 Q. You say you saw Mr. Lehman shortly after Mr. Hendrickson was here?

A. Yes, sir.

Q. He came to see you?

A. No; he didn't come to see me. I saw him at my mother-in-law's.

Q. You had a meeting there?

A. I knew Mr. Hendrickson was going over to see my mother-in-law and I thought I would go over *over* too.

Q. You saw him there?

A. Yes, sir.

Q. It was while Mr. Hendrickson was there?

A. Yes, sir.

Q. Did you see Mr. Lehman after that?

A. I did see him after, but a good while afterward I believe I saw him.

Q. How long after that did you see Mr. Mayne?

A. I couldn't tell that for I didn't make any date.

Q. About; within a month, was it not?

A. No, sir; I don't think so. I couldn't remember that.

Q. You saw Mr. Mayne in December, 1889, did you not?

A. I couldn't be positive about that.

Q. If Mr. Mayne wrote to St. Paul that he saw you and talked with you about this matter in December, 1889, you would say that was true, would you not?

A. I couldn't say because I didn't make any date of it.

Q. You would not deny it, would you?

117 A. I don't know. I couldn't say it positively when I don't know.

Q. You saw him not a great while from the time you saw Mr. Hendrickson?

A. I couldn't tell you how long.

Q. Not a great while? You certainly have some idea?

A. I haven't any idea for I didn't make any note of it.

Q. Was it the same winter?

A. I think it was.

Q. When you saw Mr. Mayne he talked with you about this, did he not?

A. I am trying to think where I saw Mr. Mayne. Of course he talked with us about this matter when we saw him.

Q. When you first saw him he talked to you about it?

A. Yes, sir.

Q. He told you what the nature of this claim was did he not?

A. No, sir.

Q. He did not tell you?

A. No, sir. I don't think he knew much about it himself then because we could not get any information. I couldn't get any from Mr. Hendrickson.

Q. Mr. Hendrickson told you it was a claim about land that was located with a land warrant?

A. He told me it was land. I asked him where it was, and he said he couldn't tell me, that the counsel out there told him not to tell. I told him, "Then you could not expect us to go into this."

118 Q. He told you it was a land located with the land warrant?
A. Yes, sir.
Q. With a land warrant that once belonged to the heirs of George W. Remsen?
A. He said from him, a soldier—soldier's land I suppose.
Q. And that the land was located by a warrant that came from the heirs of George W. Remsen. He told you that, did he not?
A. I believe he did.
Q. By virtue of George W. Remsen being in the Mexican war. He told you that?
A. Yes, sir.
Q. He told you he thought there was a defect in the title and that it could be got for the heirs? He said there was a claim there?
A. He said it was claimed for the heirs.
Q. By virtue of the assignment of this land warrant?
A. I can't tell you about that.
Q. It was about the land warrant?
A. Yes, sir.
Q. He discussed the land warrant over?
A. He didn't give me much information about it.
Q. It was mentioned between him and your mother-in-law?
A. Yes, sir.
Q. She told him that the land warrant was issued to her and her children, did she not?
119 A. I don't remember anything about the children. She said she got the land warrant. That is all I can remember.
Q. Did you see any of the other heirs about that same time?
A. When Mr. Hendrickson was there?
Q. Shortly after.
A. I suppose I did. I suppose we talked it over.
Q. Whom did you see?
A. I suppose I saw all of those who are concerned in this.
Q. You saw Mrs. Harriet A. Van Zandt?
A. No; I didn't see her.
Q. You saw John Wesley Remsen?
A. No, sir; I didn't see him. Not for some time afterwards, for he lives in Maryland.
Q. You saw your own children?
A. Yes, sir.
Q. You told them of this conversation that you had at Mrs. Wetzel's in the presence of Mr. Hendrickson?
A. Yes, sir.
Q. You say the first time you learned where this land was was in August, 1891?
A. Yes, sir.
Q. It is a fact that at Mrs. Wetzel's that day you did not learn it?
A. I didn't learn it there.
Q. No more than you knew before?
A. Not much more. I don't think I learned any more.

120 Q. These facts about this land warrant you had known before, but you did not know where it was located?
A. I didn't know it until Hendrickson told me about it.
Q. In fact you say you did not learn any more than you learned before?
A. No; I don't think I learned any more that day. Very little more.
Q. How many years have you known the fact that Mrs. Wetzel had a land warrant and sold it?
A. I never knew anything about it until I learned it from Mr. Hendrickson that day.
Q. How many years had you known not that this was located land up there, but that she had sold a land warrant?
A. I didn't know it until after Mr. Hendrickson came on.
Q. I thought you said you did not learn any more there?
A. I learned it there.
Q. I thought you said you did not learn any more there than you knew before?
A. I meant more than I knew after I saw Mr. Hendrickson. I didn't know anything until I saw him.
Q. Mrs. 'Vetzel told him these facts in your presence?
A. They were talking it over but I didn't pay very much attention to them.
Q. You heard it?
A. I heard them.
Q. You talked to your children about it?
121 A. I told them what was said; yes, sir.
Q. Then all you ever knew before that was that Mr. George W. Remsen, the deceased, was in the Mexican war? You knew that?
A. Yes, sir.
Q. And that Mrs. Wetzel got a pension?
A. Yes, sir.
Q. And that she got her back pay?
A. I don't remember anything about that.
Q. You never knew this land warrant was located until Mr. Hendrickson told you?
A. No I didn't know anything about it.
Q. You say you did not see John Wesley or Harriet A. Whom else did you see shortly after that?
A. I saw Mrs. Beckman and Mrs. Hergesheimer.
Q. They are daughters of whom?
A. Of Mary Ann Remsen, deceased.
Q. Has Harriet A. got any children?
A. Yes, sir; two. Frank and Annie.
Q. Did you see them?
A. I didn't see them then; no.
Q. You saw Mrs. Beckman and Mrs. Hergesheimer?
A. Yes, sir.
Q. Did you talk to them about what you heard?
A. Yes, sir.

Q. How long after Mr. Hendrickson was here was that?
A. I guess that was not very long. That was a short time.
Q. You told them the same as you told your children?
122 A. Yes, sir.
Q. You told them what conversation occurred in the presence of Mr. Hendrickson at Mrs. Wetzel's?
A. I couldn't remember much of the conversation.
Q. You told them of the substance, about the claim of this land warrant?
A. Yes, sir.
Q. It was generally known in the family that Mr. George W. Remsen died in the Mexican war?
A. Yes, sir.
Q. And that his widow received a pension?
A. Yes, sir.
Q. And a bounty?
A. I don't know anything about the bounty. I heard nothing about that.
Q. You heard that she received one hundred and some dollars from the sale?
A. No, sir; I never heard it.
Q. Mrs. Wetzel stated that the children generally knew that she received this money?
A. I never heard it.
Q. Your husband knew?
A. I never heard him talk about it.
Q. You never heard it?
A. No, sir.
Q. You have heard him talk about his being a Mexican soldier?
A. Yes, sir. I knew she drew a pension.
Q. How many years ago did you first know Mrs. Wetzel?
A. A few months before I was married.
123 Q. How long after you were married did you live there?
A. It was not long. I don't suppose over two months. I couldn't be exact about that.
Q. When did you get Mr. Mayne to look after your interests in this case?
A. I couldn't remember that.
Q. About how long?
A. I can't tell you. I didn't make any date of it.
Q. You made a date of this August, 1891, did you not?
A. I know because we had a meeting at his office then.
Q. He told you to keep particular account of that, did he not?
A. No, sir.
Q. How many times have you talked with him about this?
A. I couldn't tell you.
Q. Many times?
A. No, sir; not often, because I hadn't seen him very often.
Q. You talked with him about what you should testify here?
A. No, sir. I couldn't tell the day of the month, but I know the month.

Q. How long before that was it you had Mr. Mayne look after your interests?

A. I couldn't tell you. It might have been—there is no use trying to tell you the date or length of time because I couldn't do it.

Q. You had him look it up some time before that?

124 A. Yes, sir.

Q. How long before?

A. I couldn't tell you.

Q. A year?

A. No; I don't think it was that long. If I would tell you I couldn't tell you the truth because I haven't any date.

Q. Suppose Mr. Hendrickson was here in December, 1889?

A. Was he here in December?

Q. He was here in December, 1889. We will take it for granted he was here in December, 1889. If that is the case you saw Mr. Mayne shortly after that, did you not?

A. I couldn't tell you how soon.

Q. In that same winter you saw him, did you not?

A. I couldn't be positive about it.

Q. How long after Mr. Hendrickson was here did you employ Mr. Mayne to look after these matters for the heirs?

A. I couldn't tell you how long. It may have been several months afterwards. I could not be positive about that.

Q. Might it have been more than a month?

A. Of course it might have been.

Q. About how long do you think?

A. I could not tell you how long.

Q. Two or three months?

A. It seems to me longer than that. I would not be positive about that.

Q. Six months?

A. It might have been.

125 Q. And longer do you think?

A. I couldn't tell you.

By Mr. BULLITT:

Q. From the time you saw Mr. Hendrickson up to the meeting that you had in Mr. Mayne's office in August, 1891, you had been engaged with the other heirs in consultation, etc., with Mr. Mayne concerning this land claim, had you not?

A. Yes, sir; I think we had.

Q. Then in August, 1891, you met by appointment at Mr. Mayne's office to map out some plan of procedure?

A. Yes, sir.

Q. Who was present at that meeting besides yourself?

A. I remember my son was there and my youngest daughter and Mrs. Beckman and Mrs. Hergesheimer.

Q. Was Mrs. Wetzel there?

A. No, sir.

Q. Was Mrs. Harriet Van Zandt there?

A. No, sir.

Q. Do you know why neither of them were there?
A. Mrs. Wetzel is not able to go out.
Q. She knew the meeting was to be held there?
A. I don't think she did.
Q. Why was Mrs. Van Zandt not there?
A. I couldn't tell you.
Q. Do you know whether she knew that the meeting was to be held?

A. I don't think she did.

126 Q. When Mr. Hendrickson was here and you saw him did he want a share of the property in case he got it for the heirs?

A. I don't think so. I don't think there was anything like that mentioned.
Q. Did he say anything about it at all?
A. No, sir.
Q. You say he wanted to get the heirs to sign a power of attorney?
A. Yes, sir; that is what he told me.
Q. Do you know what sort of power of attorney he wanted them to sign?
A. No, sir. He didn't say anything about it.
Q. As a matter of fact, the heirs of Mrs. Wetzel made no agreement with Mr. Hendrickson at all?
A. No, sir; because we didn't get any information. He would not give us any information at all. I told him I thought it was strange to come on here and want us to give him a power of attorney and he would not give us any information.

By Mr. KELLOGG:

Q. Is it not a fact Mr. Hendrickson told you just where this land was and offered to take the case and work it up?
A. No, sir. He wouldn't tell us where it was.
Q. Did not Mrs. Wetzel say she wanted to consult a lawyer?
A. No, he proposed that himself; Mr. Hendrickson did. He said "Of course if we choose to, we could have counsel on our side."
Q. As a matter of fact, Mr. Mayne was consulted while he was in the city?

127 A. I can't say whether it was while he was in the city or not.

Q. It was within a few days after?
A. I couldn't tell.
Q. Your memory is not as faulty as you ask us to believe. Is it not a fact that Mrs. Wetzel objected and that she did consult a lawyer?
A. I said I thought we ought to find something about it.
Q. You did see Mr. Mayne within a few days?
A. I don't think so.
Q. It was within a month, was it not?
A. I can't tell you.
Q. Will you swear you did not see him within a month?

A. I would not swear at all, because I can't tell you whether it was a month or two or three months. I could not fix the date at all. I am not going to tell you lies. If I would tell you anything like that I should. I can't be positive about a thing I don't remember.

Q. During all of your married life you have lived in Philadelphia, have you?

A. No, sir.

Q. How many years have you lived away from here?

A. I should judge about five years. I would not be positive about that.

Q. Since you were married to Mr. Remsen you have lived away about five years?

A. Yes, sir.

Q. The rest of the time where have you lived?

128 A. In Philadelphia.

Q. You say you were married in 1864 and your husband went away in 1871?

A. Yes, sir.

Q. During that seven years where did you live?

A. I lived in Millsborough, Delaware, a year.

Q. That is where Mr. John Wesley Remsen lived?

A. No; he lives in Federalsburgh, Maryland.

Q. Is that where any of these heirs lived?

A. No, sir. I lived in Lincoln, Delaware, a year and I lived in Stockton—I don't know whether I lived there two years or not. The rest of the time in Philadelphia.

Q. That would make about four years in Philadelphia after you were married. During that time how far did you live from where Mrs. Wetzel, your mother-in-law, lived?

A. Mrs. Wetzel lived with me most of the time. No; I don't think that four years. She lived with me while I was away in the country, while I was in Delaware and Maryland. In the city I don't think she did live with me much of the time.

Q. When you were away in the country she lived with you?

A. Yes, sir.

Q. She went with you?

A. Yes, sir.

Q. At these three places where you went?

A. Yes, sir.

Q. While you were in Philadelphia she lived with you part of the time?

129 A. Yes, sir.

Q. A good share of the time?

A. Those first four years I couldn't be positive, but since then she has. I should judge she lived with me for nearly twenty years.

Q. You have been very intimate with her?

A. Yes, sir.

Q. And of course have talked with her a great deal?

A. Yes, sir.

Q. About her first husband, and the second, and her life generally?

A. Yes, sir; I knew her second husband.

Q. And talked with her about her first husband?

A. Yes, sir; some time.

Q. And her children?

A. Yes, sir.

Q. And her means of livelihood when she had any?

A. Yes, sir. When she had him she never said anything about her first husband's affairs.

Q. She never said a word about her first husband's affairs?

A. Very little.

Q. She talked to you about it?

A. Very little.

Q. And the circumstances of his death?

A. She told me he died in the Mexican war and having a hard time getting along with the children, etc.

Q. She stated it was generally known to her children that
130 she received his back pay and a pension and this money from the sale of this bounty land warrant?

A. I don't know anything about that.

Q. It is a fact that that was generally known, was it not, that she received a certain amount of money?

A. I never heard that. I know she got a pension. Outside of that I don't know anything about it.

Q. Did you ever know Gen. Small?

A. No, sir.

Q. You have heard her speak of him?

A. I have heard her speak about him settling her business, attending to her business, attending to this pension. I paid very little attention to it.

Q. He lived in Philadelphia, did he not?

A. No, sir.

Q. You knew that she said he settled her business?

A. She was very intimate with his family. I believe she told me she used to visit there.

Q. And that he settled the business of her first husband in connection with her pension and other matters?

A. She mentioned him in connection with some business. She didn't tell me anything definite about it, only she mentioned his name.

Q. She was the guardian of the young children?

A. I don't know anything about it.

Q. Did you ever hear her say anything about it?

A. I think I have. At the time Mr. Hendrickson was there I think she said she was appointed guardian.

131 Q. At the time Mr. Hendrickson was there she said she was guardian of some of the children?

A. I don't know about that. I heard her say she was appointed guardian of some of the children.

Q. Did you ever hear that before?

A. No, sir; not before that day. That was the first I heard about it. She never talked her business over to me.

Signature waived.

MARY J. REMSEN recalled.

By Mr. MAYNE:

Q. (Exhibit 3, 12–17–'92 H. R. E., Bible, handed witness.) When did you first come in possession of that Bible?

A. It was my husband's Bible. He had it when I married him.

Q. Has it been in your custody and under your control ever since?

A. Yes, sir.

Q. Are you familiar with the handwriting in the records there, marriages, births and deaths?

A. I am familiar with this entry on page one, certificate that George A. Remsen and Mary A. Derbeshier were united in holy bonds of matrimony, is in my handwriting.

Q. The certification as to the marriage of George A. Remsen and Elizabeth Hopkins on page one, in whose handwriting is that? (Referring to page one.)

A. That looks like my husband's.

132 Q. Was it there when you first received it?

A. Yes, sir.

Q. As to the record on page two of the birth of George W. Remsen. Do you know in whose handwriting that was?

A. Those look like my husband's handwriting. All those were in when I was married.

Q. Were those entries in the book in the way they are now when you received it?

A. Yes, sir.

Q. As to the entries on the third page, in whose handwriting are those?

A. Those are in my handwriting. I made those entries on the third page.

Q. As to the entries on the fourth page. In whose handwriting are those?

A. I think the last two on page four are mine. They look like it. The other two look like my husband's handwriting.

Q. Turn back to page one, the certification of your marriage to George W. A. Remsen. When did you enter that in that book?

A. I couldn't remember that.

Q. About when?

A. I could not remember.

Q. Has it been in there a long or short time?

A. A long while. I don't suppose it was very long after I was married. They were all entered during the year. They were entered according to their births.

Q. As to the births of your children. Those entries were made by you at about what time?

133 A. After they were born some time, each of them.

Q. A short or long time after they were born?

A. I think it was a short time. Mabel's was not. Mabel's was not for over two years, for it was two years before she was named.

Q. As to the entries of deaths on page four, those entries that are in your handwriting, when were they made?

A. I could not remember.

Q. Have you made any entries in that book recently?

A. No, sir.

Q. For how many years?

A. I guess for nineteen years anyway. I made the last one, that is Mabel's. I know she was two years old when she was named and I made it soon after.

Q. Were any of those entries made in that book after you had any knowledge of the controversy the subject of this suit?

A. No, sir.

Cross-examination.

By Mr. KELLOGG:

Q. (Page 2 shown witness.) In whose handwriting did you say the entries on page 2 were?

A. They look like my husband's handwriting.

Q. Can you say whether they were made by him or not?

A. I believe they were. I didn't see him make them.

134 Q. How many years is it since you have seen your husband's handwriting?

A. It has been over twenty-one years.

Q. You may be mistaken as to that?

A. I might be, but I always understood that he made those. It looks like his handwriting.

Q. Can you tell positively?

A. I couldn't swear to his handwriting, it has been so long since I saw any of it. I know those entries were in when I was married.

Q. Where did you get this Bible?

A. It was my husband's Bible and I have had it ever since.

Q. It has been in your house ever since?

A. Yes, sir.

Q. Did you bring it here?

A. I brought it to Mr. Mayne.

Q. When?

A. Last week.

Q. Did you ever show it to him before last week?

A. No, sir.

Q. He never saw it before last week?

A. No, sir.

Q. Did you take a copy of it and give it to him before last week?

A. No, sir. I never had any copies of it.

Q. Did Mr. Mayne ever see it or get a copy of it before last week?

A. He may have a copy. I don't remember.

Mr. MAYNE: I have a copy.

By Mr. KELLOGG:

135 Q. You have changed your mind now; you think he may have a copy?

A. I don't know whether he has a copy or not. The Bible has been in my possession. I may have shown him that record when he was here. The Bible has not been out of my house.

Q. You change your testimony that he never saw it?

A. I don't say he never saw the Bible, but it was never out of my possession. That was the question you asked me.

Q. How many years ago did he first see this Bible?

A. I couldn't tell you. It might have been since this case.

Q. Was not that one of the first things he inquired about when he came to see about this case?

A. I can't remember.

Q. Was it not one of the first things he asked you about the family, as to the names of the heirs and their births and deaths?

A. I suppose it was.

Q. How long ago was that?

A. That I could not remember.

Q. How long before August, 1891?

A. I could not remember that. I can't remember that. I don't remember when he saw the Bible.

Q. Your memory is not very good on those things?

A. Yes, sir; my memory is good. I didn't charge my mind with those things.

Q. You charged your mind particularly with this date in August, 1891?

136 A. Yes, sir; I remember that by some incident, my daughter could not be there. She had been sick I remember.

Q. About the first thing Mr. Mayne asked you when he began to talk with you about this case was about the ages and births and deaths of the members of the family, was it not?

A. I suppose it was. I know we have talked about it.

CLARA B. REMSEN, having been duly sworn, was examined as follows:

By Mr. MAYNE:

Q. Where do you live?

A. 2504 Howard street.

Q. You were born when?

A. I was born at Millsborough, Delaware, June 3, 1868.

Q. Are you married or single?

A. Single.

Q. You are a daughter of whom?

A. George W. A. Remsen.

Q. Your mother is the witness who just preceded you?

A. Yes, sir.

Q. Do you remember seeing your father?

A. I have a very faint recollection of him, as I was very young

at the time. I remember little presents he brought me and that is about all.

Q. Have you seen the Bible with the records of the mar-
137 riage of George W. Remsen to Elizabeth Hopkins?

A. The Bible that had our births in?

Q. Yes.

A. I have seen that; yes, sir.

Q. When did you first see these entries?

A. I couldn't tell you exactly when. We had it at home and I have seen it.

Q. Ever since you were a little girl?

A. Yes, sir. Since I was quite small.

Q. Do you know anything about a land warrant belonging to your grandfather, George W. Remsen?

A. I never knew he had any.

Q. Do you know a Mr. Hendrickson?

A. No, sir; I do not.

Q. Did you ever see such a gentleman?

A. No, sir; I never saw him.

Q. Do you know Mr. Lehman?

A. Was that Mr. Lehman out there this morning?

Q. Yes.

A. That was the first I saw of him. I would not have known him except I heard mamma say who he was.

Q. You were at my office, were you not, in 1891?

A. No, sir.

Q. Were you not down at a meeting at my office?

A. No, sir; not at any meeting. I remember distinctly I could not get off at the time.

Q. You have heard something about the subject-matter of this suit, have you not?

A. I have heard a little of it; yes, sir.

Q. Through whom?

138 A. Through mamma.

Q. When did you first hear it?

A. In August, 1891.

Q. Prior to that did you ever know anything in reference to any land?

A. I heard a little about it but I never knew anything of it.

Q. When did you hear that?

A. I didn't make any note of it. I just heard that there was land, but I didn't know anything about it.

Q. Did you hear about Mr. Hendrickson being on here in February from the West?

A. I can't say that I did.

Cross-examination.

By Mr. BULLITT:

Q. You say that you did not go to the meeting at Mr. Mayne's office held in August, 1891?

A. No, sir; I did not.

Q. You knew that the meeting was to be held there?

A. I knew it was to be held but I didn't go.

Q. You knew that the meeting was to be with the heirs of your grandfather and Mr. Mayne, did you not?

A. Yes, sir. Something to that effect.

Q. And you had been notified as one of these heirs to be present at it?

A. Yes, sir. I had been notified.

139 Q. You knew that the meeting was to be held in order to discuss certain lands which the Remsen heirs claimed out West, did you not?

A. I knew it was somewhere in the West; yes, sir.

Q. You did not know where the land was in the West?

A. No, sir; I did not.

Q. Prior to this meeting at Mr. Mayne's office in August, 1891, you had talked something about the lands and the claims of the heirs with your mother?

A. No, I hadn't talked of it at all. I had only heard her speak of it.

Q. You had heard her mention prior to that date that these heirs of your grandfather had a claim to some lands out West?

A. I heard her say something to that effect.

Q. Did you ever hear her say where these lands were situated?

A. No. I don't think she knew herself. In fact I know she didn't.

Q. You heard her say the land had been located by land warrant which was issued to your grandfather?

A. I don't remember of having heard her say anything about a land warrant.

Q. All you heard her say was simply that the heirs had a claim to some land out West?

A. That was all I heard.

Q. You heard her mention that some time in the winter of 1889 and 1890, did you not?

A. It was somewhere along there. Indeed I can't tell exactly when it was. It was some time about 1890, I think it was. I couldn't say positively.

140 By Mr. KELLOGG:

Q. You have lived in the same house with your grandmother a good many years?

A. Yes, sir; from the time I was a very little child.

Q. You knew that your grandfather was a Mexican soldier?

A. I knew that.

Q. You heard her speak of it often?

A. I heard her say that.

Q. She has often spoken about it?

A. Not so often, but often enough for me to know he was a soldier.

Q. You have known that a good many years?

A. Yes, sir.
Q. You say you remember your father?
A. Just a faint recollection of him. That is all. I was very young.
Q. Did your grandmother ever draw a pension from the Government?
A. I believe she did.
Q. How long have you known that?
A. I could not tell you just how long I have known that, but since I was quite small. She lived with us and I could not very well help knowing it.
Q. Did you ever know a Mr. Poulson?
A. No, sir.
Q. Did you know of Gen. Small or hear of him?
A. I have heard of him, but never knew him. I heard my grandmother speak of him.
Q. Did you ever hear your grandmother say anything about his settling up her affairs for her?
141 A. No; I never heard her say.
Q. You knew he was a friend of hers?
A. I have heard her speak of him.
Q. In what connection have you heard her speak of him?
A. Indeed, I couldn't tell you. I have just heard her speak of him as a friend of hers. That is all.
Q. You know John Wesley Remsen?
A. Yes, sir; I do.
Q. How many years have you known him?
A. Ever since I have been able to remember.
Q. Have you seen him frequently?
A. No; I haven't seen him frequently because he does not reside here.
Q. Did you know Harriet A. Van Zandt?
A. Yes, sir.
Q. Where does she reside?
A. Indeed, I couldn't tell you.
Q. In the city?
A. I believe she does.
Q. How long have you known her?
A. Ever since I can remember.
Q. You say you remember your mother speaking to you once about some land out West before August, 1891?
A. She didn't speak particularly to me, but I remember hearing her say something about it.
Q. She had been over to her mother-in-law's, had she not, and when she came home she spoke about it?
A. I think she had. I don't remember just where she had been.
142 Q. She spoke about meeting a gentleman there from away somewheres?
A. I believe she did.
Q. Do you know whether it was Mr. Hendrickson or not?

A. Indeed, I couldn't tell you the name for I don't remember.
Q. It was at the time she spoke about this land?
A. Yes, sir; I guess it was.
Q. You paid very little attention to it?
A. Very little attention. She did not say anything to me any more than the rest. Just merely spoke about it.

Signature waived.
It is agreed that the testimony of this witness may be taken without the oath being administered, he to be sworn when the commissioner arrives.

JOHN U. HERGESHEIMER examined as follows:

By Mr. MAYNE:

Q. Where do you reside?
A. Haddonfield, New Jersey.
Q. Are you married or single?
A. Married.
Q. To whom are you married?
A. To Emma F. Becket.
Q. When?
A. June 8, 1882.
Q. Where and before whom?
143 A. Curtis F. Turner, at Sommerfield parsonage, Somerfield M. E. church.
Q. Where is the Somerfield M. E. church?
A. In Philadelphia on Dauphin street, Dauphin between Sepviva and Tulip. I was not married at the church but at the parsonage. The parsonage was on York street.
Q. Have you any children by this wife?
A. One living. Three deceased.
Q. Emma Becket was the daughter of whom?
A. Of Mary Ann Becket and Daniel C. Becket.
Q. Do you know the maiden name of Mary Ann Becket?
A. Yes, sir; Mary Ann Remsen.
Q. Do you know whose daughter she was?
A. The daughter of Elizabeth and George W. Remsen.
Q. Is Mary Ann Becket living?
A. No, sir.
Q. Do you know when she died?
A. She died in June, 1882. I don't remember the exact date. I think it was the 12th.
Q. That was subsequent to your marriage to her daughter?
A. Yes, sir. About the 12th I think it was.
Q. Where did she live prior to her death?
A. She lived on Sergeant street.
Q. Did you ever live with her?
A. Yes, sir; at that time.
Q. Did you ever meet her husband. Mr. Becket?
A. No. He was dead before I knew either my wife or her mother.

144 Q. Do you know how many children Daniel Becket and Mary Ann Becket had?
A. Only the two, my wife and Maggie L. That is all I know of.
Q. Is Maggie L. married?
A. Yes, sir. To George W. Beckman.
Q. Were you present at the wedding?
A. I was not.
Q. Have you met Mr. Beckman?
A. Yes, sir.
Q. Was he ever introduced to you as the husband of Mrs. Beckman?
A. Oh, yes.
Q. Where do they live now, Mr. and Mrs. Beckman?
A. 2019 Palethorp street, Philadelphia.
Q. I understand that your wife has been ill. Will she be able to get here tomorrow?
A. I think so.

Cross-examination.

By Mr. KELLOGG:

Q. When did you say you were married?
A. June 8, 1882.
Q. You knew Mary Ann Becket in her lifetime?
A. Yes, sir.
Q. How long did you live in the same family with her?
A. Not more than a week.
Q. How long before your marriage did you know her?
A. About a year and a half.
145 Q. Quite intimately?
A. Yes, sir.
Q. After your marriage how long did she live?
A. Not more than four or five days. I think it was only four.
Q. Did you ever know Mrs. Wetzel, the grandmother?
A. Yes, sir. I knew Mrs. Wetzel.

(At this point the oath was administered to the witness by the examiner.)

Q. Did you know Mrs. Wetzel pretty well?
A. Yes, sir; I knew her pretty well.
Q. How frequently before your marriage had you seen her?
A. That I could hardly say. I didn't often see her. Only occasionally.
Q. Since your marriage have you seen her frequently?
A. Yes, sir.
Q. How frequently?
A. I might say an average of once a month. Not more.
Q. Did you know her second husband?
A. I did not. No, sir.
Q. You knew she had been married twice?
A. Yes, sir.

Q. And that her first husband died in the Mexican war?
A. Yes, sir. So I understood.
Q. From whom did you learn these facts?
A. That I can't say. I just heard it through the family in some way.
146 Q. It was generally known in the family, was it?
A. That he was a Mexican soldier, yes, sir; during the Mexican war.
Q. And died in the Mexican war?
A. Yes, sir.
Q. You have heard your wife speak about it?
A. I have heard her speak of it; yes, sir.
Q. And speak about the family generally, who they were, the members of the family?
A. Yes, sir.
Q. The immediate relations?
A. Yes, sir.
Q. Her uncles and aunts, &c.?
A. Yes, sir.
Q. And cousins?
A. Not much about the cousins.
Q. You have heard her talk of the old lady Wetzel receiving a pension from the Government?
A. I knew she was receiving a pension from the Government.
Q. As a widow of a Mexican soldier?
A. Yes, sir.
Q. You learned that from the family?
A. Yes, sir; I think I heard my wife speak of it, say that she received a pension.
Q. Any other facts in connection with the old gentleman's life and history that you heard her speak of that you remember?
A. No, sir.
Q. Did you ever hear them speak of Gen. Small in Pennsylvania?
A. I never heard them; no, sir.
147 Q. Or any of the other old friends of the old ladies?
A. No, sir.
Q. Did you hear them speak about that she received the back pay from Mr. Remsen's service as a soldier?
A. I never heard anything about it.
Q. Or a bounty?
A. No, sir; not until here recently.
Q. When did you first see Mr. Mayne in connection with this matter?
A. Some time last year, 1891.
Q. Where did you live in 1889, 1890 and 1891?
A. In Haddonfield, and part of 1891 in Hammonton, New Jersey.
Q. In 1889 and 1890 where did you live?
A. Haddonfield, New Jersey.
Q. When did you move to Hammonton?
A. In 1891.

Q. What time in 1891?
A. In February.
Q. You lived there ever since?
A. No, sir.
Q. Where do you live now?
A. In Haddonfield.
Q. Did your wife receive any letters from any one about a claim for some land out West?
A. She did not.
Q. Did she ever receive a letter about it?
A. No, sir.
Q. Did she ever receive a letter from Mr. Mayne about it?
148 A. Only here recently.
Q. How recently?
A. You might say since August, 1891.
Q. Who came to see you about this claim out West?
A. Nobody came to see me.
Q. Who came to see your wife?
A. No one. She heard it through the others.
Q. Whom did she hear it through?
A. Through her grandmother.
Q. Did she get a letter from her grandmother?
A. No. She heard it while she was visiting her grandmother.
Q. When was she visiting her grandmother?
A. That I can't say. Some time in 1891.
Q. She never heard it until then?
A. Not to my knowledge.
Q. Did you ever see Mr. Mayne or did your wife ever see Mr. Mayne about this matter before August, 1891?
A. No.
Q. Never saw him before August, 1891?
A. Yes, sir; saw him before August, 1891.
Q. When?
A. I don't know just when. Some time during the year.
Q. Was it not more than a year before August, 1891?
A. I think not.
Q. Did you hear of the fact that a man from out in the West had come here and tried to get a power of attorney or something from Mrs. Wetzel?
149 A. Yes, sir.
Q. Was it not shortly after that man was here that you heard of that?
A. Heard of what?
Q. That he had been here.
A. Yes, sir; heard that he had been here.
Q. That was in December or January, 1889, or 1890, was it not?
A. I don't know that it was. I don't remember the exact date. I didn't pay much attention to it.
Q. How did you hear of it?
A. I heard it through my wife.
Q. What did she say about it?

A. I don't know.
Q. Can you not give us some idea?
A. She said that there had been a person on here from the West.
Q. What for?
A. In reference to some land there.
Q. What else?
A. That was about all. That it had come to her grandfather as a Government warrant or land grant or something of that kind.
Q. Because he was in the Mexican war?
A. Yes, sir.
Q. A land warrant?
A. Yes, sir.
Q. You heard that?
A. Yes, sir.
Q. Your wife told you that?
A. Yes, sir.
150 Q. That was shortly after that gentleman was here from the West, was it not?
A. I think it was.
Q. Was she writing to you he had been there lately?
A. She said he had been to see her grandmother.
Q. Was she up here to Philadelphia to see her grandmother?
A. She was up to see her grandmother.
Q. When was that?
A. I don't remember.
Q. Was that not in December or January, 1889, or 1890?
A. I don't know.
Q. Was it within a year of that time?
A. I don't know that it was. I paid so little attention to it I don't remember when it was.
Q. You cared so little about it?
A. That is it exactly. I didn't give it much thought.
Q. You do not now?
A. I think more about it now.
Q. Did your wife employ Mr. Mayne?
A. Not individually she did not.
Q. Did she in connection with the rest?
A. Yes, sir.
Q. When?
A. In 1891.
Q. What time?
A. I couldn't tell you just when. Some time in 1891.
Q. In winter or summer?
151 A. In the summer of 1891.
Q. You remember that was in the spring of 1891?
A. Yes, sir. It was some time in the summer of 1891 that my wife employed him in connection with the rest of the heirs.
Q. It was considerable time before that when you first heard the rumors from your wife of this man being here?
A. Not very long.

Q. There was more or less dickering backward and forward with Mr. Mayne about the power of attorney?

A. I don't think there was.

Q. Any correspondence between Mr. Mayne and your family?

A. I don't think there was.

Q. Was there any between your wife and Mr. Mayne?

A. I don't think there was.

Q. Do you know whether there was or not?

A. There may have been some little, but not much that I know of.

Q. Do you know of any? Was there any writing between your wife and Mr. Mayne, or you and Mr. Mayne?

A. There may have been some little, but very little.

Q. Was there or was there not? Not what there may have been, whether there was?

A. There was some correspondence about August or about the time Mr. Mayne came into the case, some time during the summer.

Q. August when?

152 A. August, 1891.

Q. You remember that correspondence was about August, 1891?

A. Yes, sir.

Q. Was there any correspondence before that?

A. No; I don't think there was.

Q. Will you produce that correspondence?

A. If I have it I will.

Q. When will your wife be here?

A. Tomorrow.

Q. Will you produce it then?

A. If I have it I will.

Q. Do you keep your correspondence?

A. Not generally; no.

Q. You can remember that was in August, 1891, can you?

A. In August, 1891.

Q. Why can you not tell me somewheres near when the date was that you first heard this rumor?

A. Because I don't remember the date.

Q. How do you remember this other date? Have you been told to remember that other date?

A. No, sir; of course not.

Q. Have you talked any more with Mr. Mayne about that other date?

A. No, sir.

Q. Have you talked with anybody about what you were going to testify here today?

A. No, sir.

Q. Never talked with Mr. Mayne about what you were going to testify here today?

153 A. No, sir.

Q. You never said to him at any time what you were going to testify to here today?

A. No, sir.

Q. Or anybody else?
A. I did not.
Q. You are sure of that?
A. I am sure.
Q. You say when you first heard of this your wife told you that the claim was about a Mexican land warrant that belonged to her grandfather?
A. Yes, sir.
Q. And that a man had been here from St. Paul?
A. I don't think I said anybody had been here from St. Paul.
Q. From the West.
A. That is more like it.
Q. That is what she said, is it?
A. Yes, sir.
Q. How long after that was it that you or she saw Mr. Mayne or had correspondence with him?
A. During the summer of 1891.
Q. Is that an answer to my question?
A. I think it is.
Q. Can you not remember whether it was one or two years before August, 1891, that your wife told you that statement?
A. No; she did not tell me one or two years before.
Q. You remember that?
154 A. I said it was a short time before that. I don't remember the date. I paid so little attention to it.
Q. It might have been a long while, might it not?
A. It was not two years.
Q. It might have been a year?
A. It might have been less.
Q. It might have been more, might it not?
A. No; it might not. It was not that long.
Q. You are positive of that?
A. I feel pretty certain it was.
Q. What other members of this family have you known and how many years have you known them?
A. I knew the grandmother and my wife's mother and I knew her sister and her husband.
Q. Did you know John Wesley Remsen?
A. I know who he is, but that is about all. I met him once.
Q. When?
A. I don't know.
Q. Do you know Harriet A. Van Zandt?
A. Yes, sir; I know her.
Q. How long have you known her?
A. I first met Harriet A. Van Zandt the day of my wife's mother's funeral.
Q. Have you known her since then pretty well?
A. I think I have seen her since then about once.
Q. What is your occupation?
A. Clerk in the Philadelphia & Reading Railroad office.
Q. How long have you been such?

A. Sixteen years.

155 Q. What position do you hold?

A. As clerk in the Treasury Department.

Q. You say you did not take much interest in this?

A. I did not.

Q. Why; did your wife seem to take much interest in it at that time?

A. My wife did not. The others seemed to take more interest in it than she did.

Signature waived.

THOMAS R. CROOKS, having been duly affirmed, was examined as follows:

By Mr. MAYNE:

Q. Where do you reside?

A. 1217, North Thirteenth street, Philadelphia.

Q. You are a minister of the gospel, are you not?

A. Yes, sir.

Q. Where are you stationed now?

A. I am pastor of the Sanctuary Methodist Episcopal church, Twenty-eighth and Thompson, Philadelphia. It was removed a few years ago from Fifth and Girard avenue. It is the same corporation as it was there and the same church.

Q. How long have you been stationed there?

A. I have been stationed there nearly two years.

Q. Have you a record of the marriages celebrated in that church?

A. I have.

Q. Covering what period?

156 A. (Producing book.) We have two records, and this is the record covering the period from about 1859 or 1860 to 1870.

Q. Turn to the record and see if there is any entry there of the marriage of George W. A. Remsen to Mary J. Derbesheir?

Defendants' counsel objected as irrelevant, incompetent and immaterial, the book being the best evidence of what it contains, and it not having been shown it was produced by the proper custodian of the record.

Question withdrawn.

Q. Is the church incorporated?

Objected to as incompetent and not the best evidence.

A. Yes, sir.

Q. Where did you get that record from?

Objected to as immaterial.

A. This book is now in the hands of one of the old members, under the control of one of the old members of Sanctuary church, who holds this for a claim he has against the church, but he allows me, as the pastor of the church, when I want to verify any

records contained here, to make use of it. I suppose for me as a proper custodian to get this book it would be necessary on the part of the church to institute a suit of law and prove that he has no claim, and then he would give it up or take out a mandamus. You know more about it. To avoid trouble I let him have it and go to his house and get it whenever I want it.

Q. Was T. W. Macclary minister in charge at that church?

157 A. To the best of my knowledge, he was at one time.

Q. Is he living?

A. He is living; yes, sir.

Q. Where is he living?

A. I do not know exactly, but to the best of my knowledge I think he is living somewhere near Twenty-fifth and Jefferson. I could find it. I have a book that has the residences of ministers in. I could find it in the minute.

Q. Turn to the record and say whether there is any entry there of the marriage of George W. A. Remsen to Mary J. Derbeshier.

Objected to as incompetent, immaterial and not the best evidence, the book not having been properly identified as being produced by the proper custodian.

A. There is.

Q. Under what date?

Objected to.

A. Under the date of June 19, 1864.

Q. In whose handwriting is that entry?

A. It is presumably the handwriting——

By Mr. KELLOGG:

Q. Do you know?

A. No; I do not know.

By Mr. MAYNE:

Q. Read the record.

Defendants' counsel object to the reading of the record, the book not having been properly identified by the proper custodian, and the testimony is incompetent, irrelevant and immaterial.

158 A. (Reading:) "June 19th, George W. A. Remsen and Mary J. Derbeshier, residence of both Philadelphia. Place of marriage, Sanctuary parsonage; officiating minister, T. W. Macclary."

(Page containing reference read by the witness marked for identification 12, 19, '92, H. R. E. No. 1.)

Signature waived.

2 P. M.

JOHN WESLEY REMSEN, having been duly sworn, was examined as follows:

By Mr. MAYNE:

Q. How old are you?
A. I was born November 8, 1837, I suppose; that is what my mother says.
Q. Where do you reside?
A. Federalsburg, Carolina county, Maryland.
Q. Are you single or married?
A. Married.
Q. Married to whom?
A. Married at Federalsburg to Miss Martha B. Moore.
Q. You are the son of whom?
A. Of George W. Remsen and Elizabeth, his wife.
Q. Did you ever have any knowledge of a bounty land warrant having been received by your mother for services performed by your father as a soldier in the Mexican war?
A. No, sir. I never had any knowledge of it or know nothing about it, because I was too small and too young at the time to know anything about it.
159 Q. When, where and under what circumstances did you first hear of it?
A. The first circumstances I knew of it I was a child, when I came home from school and found mother crying and she told me father was dead. That a man had been there and told her.
Q. When and where and under what circumstances did you first hear about the land, the subject of this suit?
A. I happened to be in Philadelphia and I heard of it. I think it was some time in 1891. I never knew anything about it before.

Cross-examination.

By Mr. KELLOGG:

Q. You say you were born in 1837?
A. Yes, sir.
Q. When did you leave home?
A. I could not exactly tell you, but it was—you mean to go away from Philadelphia?
Q. To live separate from your mother?
A. My mother broke up housekeeping when I was about twelve years old in Philadelphia. I remained here until I was twenty, and then went south.
Q. Did you live in the same family with her?
A. No, sir.
Q. You lived in Philadelphia until you were twenty years old?
A. Yes, sir.
Q. Then you went where?

160 A. I went down to Georgetown, Delaware, and from Georgetown, Delaware, I got over in Maryland. I have been for thirty-two years right where I am living now in Federalsburg.

Q. Did your mother ever visit you?

A. Never but twice.

Q. Did you visit her?

A. No, sir. I visited her recently. I never went to see her but once.

Q. You knew your father was a soldier in the Mexican war?

A. Only from them.

Q. You knew it from your mother?

A. Yes, sir.

Q. When you were a boy it was talked of he had gone to the war?

A. Yes, sir. I think I saw him with his uniform on as little as I was.

Q. You- mother told you when she heard of his death?

A. Yes, sir.

Q. You were about how old then?

A. I should suppose I was between nine and ten, something like that.

Q. You lived at home with her after that for about how long?

A. Just as long as she kept house.

Q. Then you lived in Philadelphia until you were twenty years old?

A. Yes, sir.

Q. During the time you were in Philadelphia you saw your mother frequently?

161 A. I used to see her once a month. Something like that.

Q. That is after you left home?

A. Yes, sir.

Q. Whom did you live with at the time?

A. I can't tell you. I boarded one place and then another; wherever I was working.

Q. Where did your brothers and sisters live?

A. They lived around town the same way, wherever they were working. The girls were married.

Q. Did Harriet A. live in town?

A. Yes, sir.

Q. She was older than you?

A. She is the oldest of all.

Q. George W. A. lived here?

A. Yes, sir. He was the youngest of all.

Q. Give the names of the rest and where they lived.

A. He stayed right with his mother.

Q. Did Mary Ann live in town?

A. Yes, sir.

Q. What others?

A. Elizabeth. She lived in town.

Q. I suppose, during these years you were living here, you saw them all frequently?

A. Not so very. I used to see them. It was not often we ever met together.

Q. They all knew their father was in the Mexican war?

A. I don't know about the smaller ones knowing it, be-
162 cause George was a little baby, only what the other children told him. I suppose he had an idea of it.

Q. After the war your mother drew a pension from the Government?

A. I understood so. I never was aware of it.

Q. She applied to Gen. Small, who got it for her?

A. That is what I heard he say.

Q. He also got her back pay?

A. I don't know. She never told me anything about it. She never told her children anything of the kind.

Q. You heard her say she got a pension?

A. Yes, sir. I knew she got a pension. I was old enough to know that. In the after years I knew it.

Q. You knew Gen. Small, did you?

A. No. I would not know him if I would see him, I suppose. She told me of him. I guess he has been to the house but I would not know him.

Q. You do not recollect whether you would know him or not?

A. No, sir.

Q. He has been dead a good many years?

A. I don't know, I am not certain. He was living at the commencement of the war. I would not have known him. I have heard her talk of him.

Q. You heard her say that he looked after affairs in getting the pension?

A. I don't know that I ever heard her say anything of that kind.

Q. You knew she got a pension?

163 A. Yes, sir. She told me. She never particularly told the children anything of the kind. They knew it. They knew she got some money from somewhere.

Q. You knew she had got some money from somewhere?

A. She got the pension I said.

Q. You knew it by her telling you?

A. I suppose so. She told the older ones and they told the younger ones I suppose.

Q. Did you ever have a guardian?

A. Not that I know of. I don't recollect anything about whether the court appointed mother guardian or not. We were before the court I remember. I can just barely recollect that. My oldest sister can tell more about that than I.

Q. Has she not since told you about being appointed guardian?

A. No, sir.

Q. You remember being before the court?

A. Yes, sir; I can recollect going before the court. I don't recollect what for or anything of that kind.

Q. You knew when you grew up old enough that a guardian was appointed by probate court?

A. I never knew.

Q. You have known for a good many years what court appoints a guardian?

A. Certainly. The orphans' court.

Q. It was the orphans' court you went before?

A. I am not positive of that.

Q. You went before some court?

A. Yes, sir.

164 Q. Did you ever in after years go and look and see?

A. No, sir.

Q. Did you ever go and look to see anything about your father's estate?

A. No, sir.

Q. Never made any inquiry about it at all?

A. No, sir.

Q. Of anybody?

A. No, sir.

Q. As to whether he ever had any property or not?

A. No, sir; never made any inquiry at all.

Q. You have known for a good many years where you would go to inquire, to the orphans' court?

A. No; I never thought anything of that. I have known the orphans' court.

Q. You know there is where you would go to inquire?

A. Yes, sir. But I would not have ever thought of inquiring because I was not here. If any of the rest had done so they would have let me know I suppose.

Q. You never made any inquiry?

A. No.

Q. Were you in the last war?

A. Yes, sir.

Q. You knew that soldiers got bounties occasionally, did you not?

A. Certainly I did.

Q. You have heard of Mexican soldiers and soldiers in the war of 1812 getting bounties?

165 A. Certainly.

Q. You knew that soldiers in the Mexican war got bounties, did you not?

A. Yes, sir. I don't know that I did in the Mexican war.

Q. You have heard of such things?

A. Certainly. I have heard of all soldiers getting bounties and pensions.

Q. You have heard of soldiers back in 1812 getting bounties?

A. Yes, sir. I have heard of some that didn't get bounties too.

Q. Did you ever inquire to find out whether your father got a bounty in the war or not?

A. No, sir.

Q. It did not interest you?

A. How could I be interested; I was comparatively young when I went away.

Q. When you grew up?

A. No, sir; after I grew up I never thought anything about it. I was interested for myself and trying to root for myself.

Q. You think it was in 1891 when you first heard about this claim to this property out West?

A. I am positive of it, for I had not been in Philadelphia for over twenty years.

Q. What part of 1891 did you come up?

A. I don't know now. I can't say positively. I don't keep account of dates. It seems to me it was—I am not certain. My wife I expect could tell you. It was in the summer. Some time about August or September, 1891. Or later than that.

166 Q. Did you have any correspondence with anybody before that?

A. No, sir. Only my sister-in-law. I wrote to her I was coming. That was all.

Q. Did your sister-in-law write you down about this matter?

A. No, sir.

Q. What did you come up here for?

A. I just merely came here on a visit to see them.

Q. Did you ever have any correspondence with Mr. Mayne before that?

A. No, sir.

Q. Or with any one about this?

A. No, sir.

Q. It was pure accident you happening to come up here?

A. Yes, sir. My mother was sick and I was anxious to see her and I came.

Q. You never knew anything about it?

A. No, sir. I was just in the act of going away when they told me.

Q. That was in August, 1891?

A. Yes, sir. I can't say positively whether it was August or September.

Q. Were you present at a meeting with Mr. Mayne in August, 1891?

A. No, sir.

Q. Did you have anybody present?

A. No, sir.

Q. Did you sign any contract with Mr. Mayne?

A. No, sir.

167 Q. Did you make any arrangement with him?

A. No, sir. I was not at Mr. Mayne's.

Q. Have you ever made any arrangement with him since?

A. No, sir.

Q. To prosecute this suit?

A. No, sir.

Q. Have you ever talked over with him what you knew about the case?

A. No, sir.
Q. You never talked to him at all about it?
A. No, sir.
Q. Never said a word to him about it?
A. No, sir.
Q. Or anybody else?
A. Or anybody else. No, sir.
Q. Nobody has ever spoken to you about the case?
A. No, sir; never heard a word mentioned about it. Of course here recently I have heard something about it, but I haven't corresponded about it. I found out more about the case through the papers more than any other way.
Q. You read and write do you not?
A. Yes, sir.

By Mr. BULLITT:

Q. Do you know a Mr. Hendrickson of St. Paul, Minnesota?
A. No, sir.
Q. Have you ever heard the name of Hendrickson?
168 A. No, sir. I am not acquainted with anybody out there.
Q. Did you ever hear of Mr. Hendrickson coming on here from the West about the latter part of the year 1889 and talking about a certain claim that the Remsen heirs had to property situated out West?
A. No, sir; I never did for I could not. I was not here.
Q. Nobody ever said anything to you about it?
A. No, sir.
Q. You do not know anything about it?
A. No, sir.
Q. Is the name of your oldest sister Harriet A. Remsen?
A. Yes, sir.
Q. Do you recollect when she was married?
A. I can recollect when she was married, but I couldn't say positively anything about the dates for I was so small.
Q. How old were you at that time, about?
A. I suppose I was somewheres between nine or ten, maybe ten or eleven. Something like that.
Q. Do you know how old she is now?
A. I couldn't say positively. I have got her birth in my pocket.
Q. Do you recollect what year she was married in?
A. No, sir.
Q. You do not know the date of the marriage?
A. No, sir. I have got the record of her birth.
Q. Whom did she first marry?
A. Jacob Heyer.
169 Q. Do you recollect when he died?
A. He died since the war. He was out all the time during the war and came home.
Q. After his death she married her present husband?
A. Yes, sir; by the name of Van Zandt. I am mistaken about

that. She was divorced from Heyer. She never married Van Zandt until after the war.

Q. Is Mrs. Van Zandt living now?

A. She is in this room.

Q. Is Mr. Van Zandt living now?

A. No, sir; he is dead. I never knew Mr. Van Zandt. I only knew she married a man by that name. I never knew him.

Redirect examination.

By Mr. MAYNE:

Q. Did you know of the marriage of your mother to Mr. Wetzel?

A. I was not in Philadelphia. Mother came to me and told me she was going to marry Mr. Wetzel and asked me what I thought of it, and I told her I thought she would better her condition by doing it.

Q. Do you know whether she married him?

A. Yes, sir; she did. They lived together. I went and saw them afterwards.

Q. They lived together as man and wife?

A. Yes, sir.

Q. You were asked about Mrs. Van Zandt, your sister. You say you know she was married to Jacob Heyer?

170 A. Yes, sir; I knew him well. The children are living I know yet. They are married.

Q. You say you have a record of her birth with you?

A. Yes, sir.

Q. Where did you get that from?

A. It is a copy given to me. I asked for it one time and mother got somebody to write it and send it down to me. I intended to put it in the Bible but I laid it in a book home in the desk. I put it away. (Memorandum produced.) It is a very old document. I have had it for years. I intended to put it in my Bible but I never did it.

Q. Do you know in whose handwriting the entry there of the birth of Harriet A. Remsen is?

A. I don't know whose handwriting any of it is. I don't think I could tell you whose any of it is. I don't know who wrote it.

Q. When did you receive that?

A. It has been a long, long while ago. As much as sixteen or eighteen years ago. It has been around the house. I forgot all about that thing. I was looking around among the papers and I found it and put it in my pocket.

Copy produced by witness, offered in evidence and marked No. 2, 12-19-'92, H. R. E.

Objected to as incompetent, irrelevant and immaterial and being a copy.

Q. Have you seen much of your sister Harriet in the years since you have been away from home?

A. No, sir. I saw her one time just before I went in the
171 army, and never since until I came up this week or so ago, and then I took her down home with me. I hadn't seen her all that time.

Q. Did you and she go to school together?

A. No, indeed. She didn't go to school. She never went to school. She never went to school at all.

Q. She knows how to read and write, does she not?

A. No, sir.

Q. She does not know how to write?

A. No, sir.

Q. I hand you exhibit of complainants No. 4, 12–17–'92, H. R. E. This is the certified copy of the original in which the name of Harriet A. Remsen appears signed there. That is under date of October 11, 1848, when that signature is purported to have been made. Could she have written her signature?

Defendants' counsel object, first, as calling for the opinion of the witness; secondly, because it is alleged in the original bill of complaint and also in the amended bill of complaint in this action by the plaintiffs in this action that Harriet A. Remsen did sign the original assignment of the land warrant mentioned in the complaint, and thirdly, upon the ground that the question is incompetent, irrelevant and immaterial.

A. If she signed this she certainly did not write it for she couldn't write and can't write today. She never could write.

Recross-examination.

By Mr. KELLOGG:

172 Q. Your mother stated that she went with her and signed that paper herself?

A. That I couldn't say. She might have done it, but I don't know. I don't see how in the world she could.

Q. Can she not sign her own name?

A. No, or my mother either.

Q. Do you know she cannot?

A. I am not positive of it. Unless she learned recently. She has been at my house a week and I know she can't write because she wanted me to write to a lady for her. I know she can't write.

Signature waived.

HARRIET A. VAN ZANDT, having been duly sworn, was examined as follows:

By Mr. MAYNE:

Q. How old are you?

A. I shall be sixty years old this birthday, the 2d day of the new year.

Q. When were you born?

A. I couldn't tell you. That is what Brother John says I am, and he has got my age. I didn't know myself.

Q. When were you married to Mr. Van Zandt?

A. Over forty years ago, on the 6th or 7th, I can't say which, of August, as near as I can get at it.

Q. Where are you living now?

A. I am with my brother in Federalsburg, and expect to remain there until I get tired.

Q. Where is your home?

173 A. My home is with my daughter, Mrs. Fitler, 2017 Palethorp street.

Q. Is Mr. Van Zandt living?

A. No, sir; he is dead.

Q. When did he die?

A. He has been dead four years and better.

Q. Were you married before then?

A. Before I was married to Mr. Van Zandt I was married to Mr. Heyer. My first husband was Mr. Heyer. I had a divorce from him and married Mr. Van Zandt.

Q. When did you marry Mr. Van Zandt?

Q. Just about a month after this late war. After he was discharged from the army.

Q. After the ending of the war?

A. Yes, sir.

Q. How old were you when you were married to Mr. Heyer?

A. Seventeen. I was married in August and I would not be seventeen until the following January.

Q. You are a daughter of whom?

A. George W. Remsen.

Q. And your mother is whom?

A. My mother is Elizabeth Remsen. Elizabeth Hopkins was her maiden name.

Q. What is her name now?

A. Elizabeth Wetzel.

Q. Where does she live?

A. She lives in Rihle street. I couldn't tell you the number. It is between Palmer street and Frankford road.

Q. Had you any children by Mr. Heyer?

174 A. Yes, sir; I had five.

Q. Had you any by Mr. Van Zandt?

A. None at all.

Q. Had you any knowledge of your mother receiving a bounty warrant from the Government for services rendered by your father in the Mexican war?

A. No, sir. I knew nothing only that she drew a pension.

Q. Can you read or write?

Objected to by defendants' counsel as irrelevant under the pleadings and incompetent and immaterial, it being alleged in the bill that the witness signed this land warrant.

A. No, sir; I cannot read or I cannot write. I can spell and

make out a line or so in a public paper. Something like that. But I would not know my own name if it was written and put before me.

Q. Could you write when you were a young girl?

Objected to for the same reason.

A. No, sir; I never could. I never went to school a day in my life, only to Sabbath school.

Q. Did you know Isaac Boileau of the city of Philadelphia?

A. I knew an old man, when I was a little girl, by the name of Boileau. I don't know his first name. "Mr. Boileau," we called him.

Q. What was he?

A. An alderman.

Q. Did you ever go before him with your mother?

A. No, sir; never.

Q. Did you ever sign any papers before him?

Objected to for the same reason.

175 A. No, sir. I never was in Mr. Boileau's office.

Q. Referring to Complainants' Exhibits No. 4, 12–17–'92, H. R. E., under date of October 11, 1848, there appears in the certified copy of an original assignment of a certain land warrant the name of Harriet A. Remsen.

A. That is my name.

Q. Did you sign your name to any such paper?

Objected to for the same reason.

A. No, sir. I couldn't tell you if the name was there.

Q. If such a paper bears such a name, as I understand you to say, it was not written by you?

Objected to for the same reason.

A. No, sir. I never had a pen in my hand to write, for I cannot write.

Q. When did you first have any knowledge in reference to any bounty warrant?

A. Not until my daughter told me. She sent for me. I was in Manayunk living sewing. I go out sewing.

Q. When was that?

A. That was two years and better ago. About two years ago, and then August last she came for me. That is the first I ever knew of it.

Cross-examination.

By Mr. KELLOGG:

Q. You say you knew Isaac Boileau?

A. I knew him as a child. I know he was an alderman. That is all I ever knew.

Q. Is he alive now?

176 A. No, sir; he has been dead years.
Q. Did you know Gen. Small?
A. Yes, sir; I knew him when I saw him.
Q. He is dead?
A. I believe he is dead.
Q. When you sign your name to a paper how do you do it? Do you have somebody write it for you?
A. I do in my insurance. When he comes he writes my name and I put my finger on the pen, but I never did anything like that.
Q. Whenever you sign a paper somebody writes it for you?
A. They have to write it for me.
Q. You take hold of the pen?
A. Yes, sir.
Q. You have done that a good many times, have you not?
A. No, sir. I have no knowledge of ever signing any papers at all only in my insurance book, when I joined that.
Q. You have signed that?
A. Yes, sir.
Q. You remember of seeing your father?
A. Yes, sir. I remember seeing my father.
Q. He went to the Mexican war?
A. I believe he did. That is what we were taught, that my father went to the war.
Q. He never came back?
A. No, sir, I never saw him after that.
Q. You heard he was killed in the Mexican war?
A. Yes, sir. My uncle told us.
177 Q. At the time you heard of your father's death what brothers and sisters did you have?
A. I had John Wesley and Mary Ann and Elizabeth and George.
Q. They were younger than you?
A. Yes, sir.
Q. You were the oldest?
A. Yes, sir.
Q. You say you knew Gen. W. F. Small?
A. Yes, sir; I saw him come to the house and talk to mother.
Q. He looked after your mother's pension, did he not? He got a pension for her?
A. I couldn't tell you who looked after the pension.
Q. She got a pension?
A. Yes, sir; she drew a pension, but I don't know who got it for her.
Q. Did Mr. Boileau used to come to the house?
A. No, sir; never.
Q. Where did you know him?
A. I knew him because he lived two doors from us.
Q. Attached to an assignment here of a land warrant is the name of Isaac Boileau. That was his name, was it?
A. I knew Mr. Boileau by his last name. I do not know his first name.
Q. He was an alderman?

A. I think he was an alderman. We called them magistrates then.

Q. He lived in Philadelphia?

178 A. Yes, sir, on Second above Beaver.

Q. Did you ever know your mother to have any business with Mr. Boileau?

A. I never knew her to have any.

Q. Your mother was appointed guardian of the children, was she not?

A. Yes, sir.

Q. By the orphans' court.

A. I do not know how she was appointed, but I know she was appointed.

Q. She was appointed by some court?

A. Yes, sir.

Q. You remember that?

A. Yes, sir. I remember that.

Q. She went to the court to get appointed?

A. She went to the orphans' court I believe.

Q. Did you ever go with her?

A. Yes, sir; we all went.

Q. You were with her?

A. Yes, sir.

Q. Was she appointed guardian of you too?

A. She was not appointed anything in my presence. Only we stood up and I heard a man say this was Mr. Remsen's widow and there were his children, and mentioned our names, and mother took us out. That was all I ever saw.

Q. Were there any papers signed there?

A. I don't remember seeing any. I don't remember seeing mother sign any papers at all. If she did she did not do it before me.

Q. She might have signed something there?

A. She might have and I didn't know it.

179 Q. That was a good many years ago. You do not remember everything that occurred there?

A. No. I do remember us going and standing there. We had nothing to say. No one spoke to us from the time we went in until we came out.

Q. That was at the orphans' court?

A. Yes, sir.

Q. Did you ever go with your mother anywhere else when she did business?

A. No, sir; no business at all. She never took me.

Q. You do not pretend to remember everywhere you went when you were a little child?

A. I never went anywheres only to Sunday school and home.

Q. You do not pretend to remember every place you went forty years ago?

A. No.

Q. You might have gone with her some place?

A. No, sir; she never took me. She never took anybody when she went anywheres but my uncle's.

By Mr. MAYNE:

Q. What was his name?
A. James Hopkins.

By Mr. KELLOGG:

Q. You say you knew your mother got a pension?
A. Yes, sir. I don't know how she got it.
Q. Did she get any other money?
A. Not to my knowledge.
Q. Did she get any back pay?
A. I could not say that, for I do not know that.
Q. Or bounty?
180 A. That I do not know. Mother never talked her business before her children. We did not know as much as children do now.
Q. Who do you know, of the old residents here in Philadelphia, that lived here then?
A. They are pretty much all dead. I do not know. I could not go around and hunt.
Q. Do you know anybody that you knew then?
A. No, sir; I don't know any one but my uncle. That is the only one.
Q. Where does he live?
A. I believe she said Charlotta street. He used to live Front and Huntingdon. I cannot tell for I don't reside in the city. His name is James Hopkins.
Q. He lives in Philadelphia?
A. Yes, sir.
Q. What is his business?
A. House carpenter. Mr. Beckman can tell you where; he is a brother-in-law of Mr. Beckman's.
Q. He is an old man, is he?
A. Yes, sir.
Q. Did he know your father?
A. Yes, sir.
Q. And the family very well?
A. Yes, sir.
Q. Did he know Alderman Boileau?
A. Yes, sir.
Q. Did he know Gen. William F. Small?
A. That I can't tell you.
Q. Who else did you know here in Philadelphia?
181 A. I do not know any old people. Mr. McCauley and Mr. Harvey and those people are all dead, around Second street. When I was married I went away from home up in Lycoming to live, and I don't know much about it. I married young and went away from home young.

Q. When did you first hear that your father was entitled to a land warrant?

A. About two years ago my daughter sent a letter to me. She told me to come home and I came home and she told me. I always took her with me, for I can't read nor write. I always took her because she could.

Q. About two years ago?

A. Yes, sir.

Q. Where did you live then?

A. Lycoming, Pennsylvania, when I first heard of it. That is fourteen miles above Jersey shore.

Q. That is when you first heard of it?

A. Yes, sir.

Q. About two years ago?

A. Yes, sir.

Q. It was in the winter that you first heard this, was it not?

A. I can't tell you that, whether it was. You could go without a shawl. It was in the fall when my daughter first told me. It was before Christmas when she first made me acquainted with it and I came home.

Q. About two years ago?

A. Yes, sir.

Q. Was it not about three years ago?

A. No; it was two years ago.

182 Q. Two years ago this fall?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Did you ever hear of a man coming here from St. Paul?

A. No, sir.

Q. To see your mother?

A. No, sir.

Q. Who did you say came to tell you?

A. My daughter. Miss Beckman acquainted her with it and she sent for me and since then I have been in the city living.

Q. When did you first see Mr. Mayne about this?

A. One year last August.

Q. Did you tell over the facts to him that you knew?

A. No, sir. I only came with the rest to see what he could do. If there was anything to be done, I wanted my share too.

Q. You say you knew that your mother got a pension?

A. Yes, sir; I knew when she would go to draw it. She first drew it at the United States mint. When she first drew a pension she drew it from there.

Q. Where did she go to get it? Where is that?

A. I don't know where that is.

Q. Did you go with her?

A. No, sir; I never did. My grandfather and uncle went with her for she was an invalid and had to be taken in a carriage.

Q. You will be sixty years old when?

183 A. The second day of January next. That is as near as I can come at it. Brother John has the ages. I have not got them. Me being away from home I know very little about my people.

By Mr. BULLITT:

Q. Did you ever hear of a man named Hendrickson coming on here from the West to see the heirs of your father in regard to some land out West somewhere?

A. No, sir. I never heard of it.

Q. Did you ever hear of a man named Stevens living in the West who knew something about a claim of the Remsen heirs about some land out West?

A. I never did.

Q. When you first heard of this claim to the land in controversy in this suit did you not go to consult a lawyer?

A. No, sir; I did not. I didn't know much about it and I didn't put much stock in it, for I didn't think it was really so. I thought when mother got the pension that was all she was entitled to.

Q. You did not do anything then until you came to Philadelphia in August, 1891, to see Mr. Mayne, together with the other heirs?

A. We were there once; yes, sir.

Q. You saw Mr. Mayne at that time?

A. I saw Mr. Mayne at that time. My daughter brought me.

Q. Mr. Mayne explained to you the nature of this claim, did he not?

A. Yes, sir.

184 Q. He explained it to all the heirs at that interview?

A. He did to all of us there.

Signature waived.

Mr. Mayne offered in evidence certified copy of the record of the orphans' court testified to by Mr. Fortin, clerk, which copy is marked Complainants' Exhibit No. 3, 12-19-'92, H. R. E.

TUESDAY, *December* 20, 1892—10 a. m.

Present: The examiner, Henry R. Edmunds, Esq. Counsel as before.

THEODORE STEVENS.

It is agreed that the witness may be examined without being sworn, to be sworn subsequently.

By Mr. MAYNE:

Q. What is your residence?

A. 960 North Fifth street.

Q. You are the pastor of St. John's M. E. church in the city of Philadelphia?

A. I am.

Q. How long have you been pastor of that church?

A. Since last March.

Q. Do you know who was pastor there in 1848?
A. I do.
Q. Who?
185 A. Joshua A. Humphreys.
Q. Is he living?
A. No.
Q. Where are the records of marriage kept in your church?
A. They are kept in the safe in the church.
Q. Have you brought with you the records of marriages in that church in the year 1848?
A. I have.
Q. Is that the record? (Book shown witness.)
A. Yes, sir.
Q. Where did you get it from?
A. I got it out of the safe of the church.

Witness produced book of records.

Q. Look under the year 1848 and see if there is any record there of the marriage of Jacob Heyer to Harriet A. Remsen?
A. I find "Married August 6, 1848, Jacob Heyer to Harriet A. Remsen, J. A. Humphreys."

Objected to by defendants' counsel as incompetent, irrelevant and immaterial, the witness reading from the book, the book not being properly identified.

Q. In whose handwriting is that entry?
A. It is in the handwriting of Joshua A. Humphreys.
Q. What is the date of the marriage?
A. August 6, 1848.

Entry in book read by witness marked for identification, 12–20–'92, H. R. E.
Objected to as secondary evidence and incompetent.

Q. Is St. John's church incorporated?
186 A. It is. It is incorporated as St. John's Street——
Q. Is that the only record you have of marriages in that church?
A. We have another record.
Q. Are the records of marriages made at the present time entered also in that book?
A. No, sir. We cannot keep one book to stretch over a century.
Q. Have you any objections to our putting this book in evidence and allowing it to go to St. Paul, Minnesota?
A. I have not any right to do that. It is the corporation. I do not object. It is in my possession as custodian. I am the pastor. The corporation has a board of trustee- that have charge of all the property. I have not any right.

Cross-examination.

By Mr. BULLITT:

Q. Were you acquainted with Mr. Humphreys in his lifetime?
A. I was.
Q. Are you familiar with his handwriting?
A. I know it well.

(The witness was here sworn by the examiner.)
Signature waived.

THOMAS W. MACCLARY, having been duly sworn, was examined as follows:

By Mr. MAYNE:

Q. You are the pastor of Sanctuary M. E. church?
187 A. I was years ago. That church is not in existence now. I was pastor there from 1864 to 1866, inclusive.
Q. Did you know George W. A. Remsen?
A. Yes, sir.
Q. And Mary J. Derbeshier?
A. Yes, sir.
Q. Did you officiate at their marriage?
A. Yes, sir.
Q. When was that marriage celebrated and where?

(Witness produced memorandum book.)

By Mr. KELLOGG:

Q. What is that book?
A. It is my private record.

The witness referred to his private memorandum book and stated: I married these persons at 985 North Fifth street, Philadelphia, June 19, 1864; George W. A. Remsen to Mary J. Derbeshier, both of Philadelphia.

I- you should need me at any time there is my address. (Handing card to counsel.)

By Mr. MAYNE:

Q. Have you any objection to our offering that book in evidence and depriving you of it for two or three years?
A. Yes, sir; I have. I do not like to risk it so far and so long away from me.

Entry read by the witness marked for identification 12-20-'82, H. R. E.

Q. Do you know this lady standing here? (Referring to Mary J. Remsen.)
188 A. Yes, sir.
Q. Who is she?
A. This is Mrs. George W. A. Remsen, formerly Mary J. Derbeshier.

Q. When did you last hear from George W. Remsen, or last see him?

A. I have not seen him since I married them. I do not believe I have seen him since I married them. I was somewhat acquainted with him beforehand.

Q. Did you ever celebrate a marriage between George W. Beckman and Miss Laura Becket?

A. Yes, sir; I did.

Q. When and where?

(Witness referred to private memorandum book.)

Q. Have you a private entry of it in your memorandum book?

A. Yes, sir. In this book. (Referring to book.) I was at the Port Richmond charge then, in the northeastern part of the city. "George W. Beckman, 1878, July 9th, to Miss (they called her Laura) Mary L. S. Becket, both of Philadelphia."

Q. Where did you marry them?

A. In the neighborhood of Siloam Methodist church in a small street above Otis street.

Q. Do you know Mrs. Wetzel?

A. Yes, sir. I have known her for thirty years and seen her frequently.

Q. Did you know her prior to her marriage with Mr. Wetzel?

A. Yes, sir.

Q. Whom did you know her as then?

189 A. She was Mrs. Remsen.

Q. What Remsen was that?

A. That was the mother of George whom you are inquiring about.

Q. Who was the father?

A. The father was named Hopkins, formerly of Delaware. He came to Philadelphia from Camden, Delaware.

Q. The father of whom?

A. Mrs. Remsen's father. She was a widow twice. Her maiden name was Hopkins.

Q. As Miss Hopkins she married whom?

A. She married Remsen, this boy's father whom you are inquiring after.

Q. Did you ever know of her husband, Mr. Remsen, having been in the Mexican war?

A. No, sir. Now I am off; I do not know anything about that.

Q. Which of the children did you know of Mrs. Wetzel?

A. I knew more intimately one who is now dead; that is Mrs. Becket, the mother of this Laura Becket whom I married. She had other children. There was a Harriet. I did not know them. I cannot speak for that.

Q. Do you know who Mrs. Becket married?

A. No, sir. She was a widow when I came to the charge.

Q. Tell me whether you can identify this lady as Mrs. Wetzel (referring to Mrs. Wetzel)?

A. Yes, sir.

190 The witness identified Mrs. Wetzel as Mrs. Remsen. Signature waived.

ELIZABETH WETZEL recalled.

By Mr. MAYNE:

Q. Do you know this lady (Mrs. Hergesheimer)?
A. Yes, sir.
Q. Who is she?
A. She is my grand-daughter, Emma Hergersheimer. She is my draughter Mary Ann Becket's daughter.
Q. Who is this gentleman (Mr. Hergesheimer)?
A. This is her husband.
Q. What is his name?
A. Uber.
Q. Uber what?
A. J. Uber Hergesheimer.
Q. In your testimony in reference to your daughter Harriet, were you present with her at Mr. Boileau's office?
A. I took her with me for company.
Q. Did you see her sign her name to that instrument?

Defendants' counsel object as incompetent, irrelevant and immaterial, and also because it is alleged in the amended bill of complaint and admitted in the answer thereto in this action that Harriet A. Remsen signed her name to the land warrant assigning it to
191 Nathan C. D. Taylor, and that this witness has already sworn to the fact that she saw her sign her name to the paper.

Question read to the witness.

A. No.
Q. What did you refer to when you said you saw her sign that?
A. I took her with me for company as a child—I had nobody else to take—and when I put my signature to the paper—I had been used with all the other papers to taking my brother or my father.
Q. Which brother?
A. I have not got but one. I turned around to the Squire after I signed it and I says, "Does she have to sign it?" and he says, "Well, she can, if she chooses." I did not go around—I did not see her sign it. He said she could if she choose. Somebody or other told me she signed it since—some years back—said that she signed the paper, but I did not see her do it.
Q. Have you any knowledge of her ability to write?
A. She can't write.
Q. Never could?
A. I never knew her to write. That is the reason I told that gentleman that that was not her writing, because I know she don't know how to write.

Cross-examination.

By Mr. KELLOGG:

Q. You remember testifying here on Saturday?

A. Yes, sir.

192 Q. You testified to the truth then, did you?

A. Certainly I did, as far as I knew.

Q. You say that is when you went to sell this land warrant?

A. It was before the man took it to sell.

Q. That is what you went there to sign so as to sell the land warrant?

A. Yes, sir.

Q. (Exhibit 4, 12–17–'92, H. R. E., shown witness.) This exhibit says "For vale received, we, Elizabeth Remsen, widow, for myself, and as guardian of the person and estate of Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen, minor children of George W. A. Remsen, deceased, duly appointed by the orphans' court of the city and county of Philadelphia, and Harriet A. Remsen, do hereby sell and assign unto Nathan C. D. Taylor, all our right and title and all the right and title of the said minor children to the within certificate or warrant No. 28811 for one hundred and sixty acres. Witness our hands this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania." Signed "Elizabeth Remsen, her mark, for myself and as guardian of the minor children of George W. A. Remsen, deceased." Signed, "Harriet A. Remsen." Witnessed by Isaac Boileau and William F. Small. "Acknowledged before me this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania. Isaac Boileau, justice of the peace."

193 That is what you referred to, is it not? That is the paper you referred to as having signed to sell the land warrant?

A. Yes, sir. I never heard it read.

Q. That is what you mean to say when you sold the land warrant?

A. Yes, sir.

Q. That is the paper you referred to?

A. That is the paper I referred to, I suppose.

Q. Mr. Boileau was an alderman?

A. Yes, sir.

Q. A justice of the peace?

A. Yes, sir.

Q. He lived how far from you?

A. A couple of squares.

Q. You took Harriet with you?

A. I took her with me as I told you before. I wouldn't say I did if I didn't. I took her with me for company.

Q. She was there when you signed it?

A. She was there. I signed it, and as I turned around to sit down from standing up from the desk I asked him, "Does she have to sign it?" He says, "She can do as she pleases." I paid no

more attention to it. I was all confused at the time. My sister was dead and I was going away next day.

Q. You suppose she signed it?

A. I supposed she signed it.

Q. And you said so the other day?

A. I said the other day——

Q. That she signed it?

A. I was not positive—when I went home and studied I
194 thought to myself that I did not see her, and I said I did not see her sign it. After I got home and studied I thought to myself did I say that she signed it. I did not see her do it. I would not say anything but what was so.

By Mr. BULLITT:

Q. Somebody talked to you about this case yesterday, did they not, or last night?

A. No, sir. There was nobody talked to me.

Q. Nobody has spoken to you?

A. There was no one in my house. No one has talked to me, only I was talking to my daughter-in-law coming down, but not about that.

Q. Coming down this morning?

A. Yes, sir; we were talking.

Q. Did Mr. Mayne go to see you last night?

A. No, sir.

Q. Did he go to see you yesterday afternoon?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. What made you come down this morning? Who told you to come down to testify again in this case?

A. They did not tell me anything about coming down to testify in the case.

Q. How did you happen to come down this morning?

A. My daughter-in-law said that there was something about the marriage, about my brother, somebody would come here and satisfy you of my being married, being Mr. Remsen's wife.

195 Q. Your daughter-in-law said that to you?

A. Yes, sir.

Q. When did she tell you that?

A. She told me that this morning. I told her I could not come; I didn't feel able to come. I slept none of last night. I was sick all night.

Q. Which daughter-in-law was it that told you that?

A. I have but the one here.

Q. Mrs. Remsen?

A. Yes, sir. She told me I had better come down this morning.

Q. For the purpose of testifying in this case?

A. That they expected somebody would be here to identify me as Mr. Remsen's wife.

Q. Did not your daughter tell you to come down here and swear that Harriet A. Remsen did not sign that assignment?

A. No, sir.

Q. You are certain of that?

A. No.

Q. You are not certain?

A. She did not tell me.

Q. Nobody told you to come down?

A. Nobody told me to come anything about that. I did not know it until I came in here. I was telling you I thought it over last night myself.

Q. What made you think it over last night?

A. I was studying over to myself. There was no one with me I am by myself.

Q. What were you studying over?

196 A. I was thinking about her writing when I knew she could not write. I hated to say out right away she couldn't write at all. I said I doubted it.

Q. Nobody told you of the testimony your daughter Harriet A. Remsen gave here yesterday?

A. No, sir.

Q. You are certain about that?

A. I haven't seen any of them. I live too far from them.

Q. You just happened to think over this?

A. I was thinking over it about when I said her name being written there, when I knew she didn't do it.

Q. Is it not a fact that when you went down to Mr. Isaac Boileau's office to sign this assignment of the land warrant with you-daughter, Harriet A. Remsen, that after you had made your mark on the paper one of the witnesses who was present took a pen and wrote Harriet A. Remsen's name and Harriet A. Remsen touched that pen with her finger as he wrote her name?

A. I don't know. There was nobody there.

Q. Were there not any witnesses there?

A. I did not see anybody in the office but the old gentleman.

Q. Is it not a fact that he wrote her name and she touched the pen as he wrote? You saw that, did you not?

A. No, sir.

Q. You did see that?

A. No, sir.

Q. You are positive of it?

A. Yes, sir.

197 Q. There cannot be any mistake about it?

A. No.

Q. What did you mean when you said the other day she did sign it?

A. I did not say she signed it.

Q. You are positive you did not swear she signed it?

A. I don't think so. I said I took her there and it was asked if she could sign it. There is many times a little mistake made in

things, you don't mean it or don't understand it right. I won't say I saw what I didn't see. That paper was left there until next day.

Defendants' counsel on the trial of the case will move that the last statement of the witness be stricken from the record because it is a voluntary statement and not responsive to the question.

Q. You recollect what you said on Saturday, do you not?

A. I can't remember everything I said.

Q. You recollect what you said in reference to going down to Mr. Boileau's office and what you said in reference to your signing this paper and Harriet A. Remsen signing it?

A. Yes, sir. I just now told you.

Q. What did you testify to Saturday?

A. I said she went with me and I asked the squire whether her name should go on it or not.

Q. What else?

A. I expected she signed it. I didn't say she really did.

Q. You did not say that?

198 A. I don't think I did.

Q. Are you positive?

A. I do not think that I said she really signed it. I said the question was asked me and I expected her name was signed to it.

Q. What did you say on Sunday in reference to her signing?

A. I don't recollect any more.

Q. Give us just what you recollect that you said last Saturday in regard to her signing.

A. I told you that she went with me and that Mr. Boileau—I turned around to him when I went to go towards the door, and I said, "Don't she have to sign it?" and he said she could do as she pleased, and whether she did it or not—I thought she did it, if she didn't.

Q. Did you not say that she did sign it?

A. No; I didn't. You might have misunderstood me. I wouldn't say a person did a thing that didn't.

Q. Here is a copy of your testimony as you gave it here last Saturday. Last Saturday you were asked this question, "Q. You say that Harriet went with you? A. Yes, sir." Is that true?

A. What is it?

Q. You were asked this question last Saturday, "You say that Harriet went with you." You answered it, "Yes, sir." You testified to that last Saturday.

A. I took the child with me for company.

Q. You testified to that last Saturday, did you not?

A. Yes, sir.

Q. Is that true or false?

199 A. That is the truth. I took her with me.

Q. You were asked this question last Saturday, "Q. And she (that is Harriet) signed the paper too." You answered that "Yes, sir." Did you testify to that last Saturday?

A. I didn't say she really signed it. I was asked the question—I asked the question whether it was needed. I didn't see her sign it.

Q. You testified last Saturday as follows: "And she signed the paper too? A. Yes, sir." Is that true or false?

A. You don't speak it the way I do.

Q. I am giving you the exact words you used last Saturday.

A. I said he asked me about the paper.

Q. You said, in answer to this question, "And she signed the paper too? A. Yes, sir." I want to know whether that was true or false?

A. I didn't see her sign the paper.

Q. When you said "Yes" to that question last Saturday you were not telling the fact?

A. I expected she had. I didn't see her do it. I don't make a practice of saying anything but the truth.

Q. Last Saturday you testified as follows: You were asked this question: "She," (that is Harriet) "went with you and signed the paper?" You answered as follows: "Yes, sir. She signed the paper but it was not read to her." You were also asked this question: "You do not know whether she read it or not? A. Yes, sir; I know I stood there and she made her mark."

200 A. I didn't testify to that.

Q. You are positive about that?

A. I didn't say no such word.

Q. Who has been talking to you since yesterday, and who has told you to change your testimony this morning?

A. I didn't change my testimony at all.

Q. You are positive of that fact, are you?

A. I haven't changed it. The word has been changed there, whoever read it. I didn't say no such positive word about her writing it. I don't know as I would have come down this morning as sick as I was if it was such a thing as that, because I don't consider it is right.

By Mr. KELLOGG:

Q. Do you know that every word you say is taken down by this shorthand man?

A. I can't help that.

Q. Do you not know he took those words on Saturday just as you said them?

A. Yes, sir; but I put no stress that she really signed it.

Q. How large a room was this where you signed this paper, the alderman's office; how big a room was it?

A. I don't know. I don't remember in particular about that.

Q. The old man was there?

A. There was a couple of desks in it.

Q. The old man was there?

A. Yes, sir.

Q. And Harriet was there?

201 A. Yes, sir.

Q. Harriet was there, was she not?

A. I say she was there.

Q. You saw her there?

A. Certainly I saw her when I took her with me.
Q. She did not go out of your presence?
A. Yes, sir. She was around on the other side.
Q. Of the table?
A. I was not at any table. I stood alongside of the desk and made the mark.
Q. And Harriet was there too?
A. She was not aside of me. She was on the other side.
Q. You could see her?
A. I couldn't see her when I went and sat down; when I sat down I couldn't see her.
Q. You asked the alderman if she should sign it?
A. I asked him when it was ready for her — sign it.
Q. He said yes?
A. He said she could do as she pleased?
Q. Then she signed it?
A. I thought so.
Q. You still think so?
A. No, sir.
Q. You have changed your mind since Saturday?
A. No. My reasons changed. I studied.
Q. You say you never mentioned this subject to Mr. Mayne or anybody else since Saturday?
A. I haven't seen the man until I came in here.
Q. You have not talked with him about it?
A. No, sir.
Q. Or anybody else?
202 A. No. Who have I had to talk with; I have been sick ever since I went home.
Q. Have you talked with anybody about it?
A. No, sir. There is no one except my sister knows anything about this business. I live with her.
Q. Did you testify to this on Saturday, "Q. That is the way it appears on the paper, Harriet A. Remsen? A. I thought she signed it Heyer."
A. I thought so. I didn't say she did, did I.
Q. You thought so?
A. I thought so.
Q. You still think she signed it Heyer?
A. I don't know what to think. It is hard for me to tell what to think.
Q. That was a good many years ago?
A. Yes, sir. Certainly it is a good many years. I was in a great deal of trouble. My sister was laying dead at Smyrna.
Q. Harriet went to Sunday school when she was a girl, did she not?
A. Yes, sir.
Q. Did she ever go to school?
A. Yes, sir. She didn't take education like the other children.
Q. But she went to school?
A. She went to school.

Q. How long did she go to school?
A. I can't tell you.
Q. You know she went to school?
A. She went to school a good while when we lived in the
203 country, more than she did in Philadelphia. She never took to education like the other children.
Q. How long do you think she went to school?
A. I don't know.
Q. A year or two?
A. She went from the time she was very small. There were little country schools, they could go at any age.
Q. She did not get much education?
A. No. She didn't take it as the rest of the children did. She didn't seem inclined to it.
Q. She learned to read?
A. Very poor reader, I guess.
Q. And write a little?
A. No, sir; I never saw her. I know she would always get her brother or sister to write anything for her.
Q. Did you ever see her sign any papers, somebody sign the name for her and she hold the pen, when she wrote?
A. No, sir; but when she wrote to her husband her brother did it for her.
Q. Would he sign it and she hold the pen?
A. She didn't hold the pen.
Q. She held the pen?
A. No.
Q. Did you know about her getting any insurance or going into any insurance?
A. No, sir. I don't know anything about it.
Q. Or pension? She never got a pension?
A. What for? I never knew her to get any. I have not
204 seen her so you need not ask me much about it. I haven't seen her to speak to her until a few days when she came up to come here. For about seven or eight years she has been in the country.

By Mr. PORTER:

Q. We have got things in a kind of a tangle, and I want to get it as straight as I can. Now, on Saturday you said one thing, and today you have denied it.
A. No, sir.
Q. It seems so, from the notes the stenographer took.
A. It is not so. It is the same thing.
Q. You still think you said the same thing today as you did on Saturday?
A. I say the same thing concerning her. What I said is the truth, and I want to tell you nothing but what is the truth.
Q. I know that, but you are in a false position apparently, and I want to get the matter straightened out. You said one thing Saturday, and today you said something else.

A. You must have misunderstood me.

Q. Just think of that day when you and Harriet were in the alderman's office. At that time you were the guardian of your little children, were you not?

A. I did not look at it so much as the people speak these days about it. Certainly I was the one to protect them and take care of them.

Q. Had you ever been appointed guardian by the court?

A. Certainly I was, but I did not think so much of it then.

205 Q. Were you appointed the guardian of Harriet, too?

A. No, I was not.

Q. Well, Harriet was with you there that day?

A. She took the children there for me.

Q. She was a minor child? She was a little girl?

A. She was too old to have her name on the paper, the lawyer said.

Q. She was there, and was between fifteen and sixteen years old, or how old was she?

A. I don't know. When I went to give my children's names to the lawyer I commenced with her and he told me when I gave her age that she was too old, and that it was the younger ones he wanted, and that is the reason her name is not among the children, but she went to the court; I went to the lawyer's house, I used to visit them, I was acquainted with his wife, and he told me to come and go down to the court with him, and she went down to the court with the children, and I met her at the door.

Q. Did she know what they were going to court for?

A. I don't know. She knew we were going to do something. I cannot remember all such little things as that so far back.

Q. I want you to try and remember the day in the alderman's office.

A. I remember it just as well as if I studied for a year.

Q. What I want to find out is this: Harriet was certainly there with you?

A. I don't say she wasn't.

206 Q. And she knew what you were signing, didn't she?

A. I told her I had to sign a paper.

Q. Didn't she know that you were signing a paper in relation to this land warrant?

A. I did not know much about it myself.

Q. Didn't she know?

A. I don't know whether she did or not.

Q. There was your own daughter in the office with you going to sign a paper, and yet you say you do not know whether she knew what the paper was or not?

A. I did not ask her any questions about it one way or the other. I never heard the paper read.

Q. You knew what the paper was for?

A. He told me.

Q. Didn't Harriet know what that paper was?

A. She may have known. I did not tell her anything about it.
Q. Don't you think she knew that day?
A. She knew I was signing a paper.
Q. Didn't she know what the paper was?
A. I cannot tell you what she knew about it. I did not say anything to her what the paper was.
Q. Did you know that she had any interest in what you were doing?
A. No.
Q. Didn't you know that your little children had some interest in this money?
A. I expected that it was money for me to raise them with.
207 Q. Didn't you know then that Harriet had some interest in the money you were getting?
A. She had the same while she was home.
Q. Are you prepared to say that she did not know what was done that day in the office when she was with you?
A. I don't say she did not know, or don't say she did. Certainly she knew I was signing a paper, but I cannot say whether there was anything said about what the paper was.
Q. Now, on Saturday last, if our notes are correct, you were under the impression then that she either signed or made her mark?
A. That is what I expected she done.
Q. If she did that she certainly must have known what the paper was about?
A. He must have told her when I did not hear him. I did not pay any attention.
Q. Didn't you tell her what it was?
A. No.
Q. Would you let your child sign a paper in your presence, or make her mark to it, unless she knew what it was about?
A. I had nothing to say one way or the other about it, only asking the squire whether she should sign.
Q. Why did you ask him that question if she had no interest in it?
A. I expected she would sign the paper. I did not know anything about her having any more interest than any of the rest. The reason I asked her to sign was because I had my brother
208 to sign the other paper, and my father and I thought it was better than for me to sign the paper alone and nobody else.
Q. You think she did sign it, or made her mark?
A. So I did, I did not know any better.
Q. And you thought so on Saturday? You thought you could find her mark on that paper?
A. I do not think she wrote that name, because I knew she could not do it.
Q. Do you think you have seen her signature on this paper?
A. No, I would not know it. I never seen her make one.
Q. Can you see this signature on this paper?
A. That cross, I see that.

Q. Does this look like the paper you signed that day?
A. I could not tell you at all, for I don't remember what it looked like.
Q. Look below there and see the name of Harriet A. Remsen, do you see that? Does this look like the paper, if you can remember?
A. I cannot remember. I don't remember the size of it or anything about it. I have no recollection of it.
Q. Did the children know what you were appointed guardian for, at all?
A. I don't know.
Q. Was there any other money coming to them except this land warrant?
A. No, nothing except what I got from Mexico from their father.
209 Q. Nothing but what came through his being a soldier?
A. No, sir.
Q. Did you give Harriet any of the money which you got for this land warrant?
A. No; I did not give any to any of them. It was to keep them on. It would not go very far, $3.50 a month of a pension.
Q. Then Harriet did not get any of the money?
A. No, sir.
Q. Did you spend any of it in keeping her?
A. Only on the table.
Q. Just the same as the rest?
A. Yes, sir; but she was not there very long.
Q. And she was in court the day the guardian was appointed for the other minors?
A. Yes, sir; she was in court with the children. She waited at the entrance with the children until I came.

It is stipulated that the stenographer's notes, appended to the commissioner's report of the testimony, taken on Saturday, December 17th, 1892, are correct as therein reported, with particular reference to the testimony of Mrs. Wetzel.

By Mr. KELLOGG:

Q. Do you know a Mr. Poulson, pension attorney?
A. Yes, sir.
Q. Where does he live?
210 A. I don't know. I used to know when I drew a pension, but I don't know anything about him now.
Q. Do you know James Hines?
A. Yes, sir; he was my groomsman.
Q. Where does he live?
A. The last I heard of him, about three years ago I heard he was in Gloucester. I have not seen him for twenty-five years. I don't think I would know him if I seen him.
Q. Where did Harriet go to school?

A. Master street, the last school she went to. I think it was Master street.

Q. In Philadelphia?

A. Yes, sir.

Q. Who did she go to school to, do you remember any of her teachers?

A. I don't remember. I used to send her to a small pay school. In the country she went to school to a small pay school.

Q. Where was that?

A. In the State of Delaware.

Q. What town?

A. Camden. When she was small.

Q. Who did she go to school to, do you remember?

A. A man by the name of Simpson.

Q. What was his first name?

A. I cannot tell you.

Q. Is he alive now?

A. I think not. I guess not. My parents came from down there.

Q. From Camden, Delaware?

A. Yes sir.

211 Q. Do you know of anybody that Harriet went to school with, any of her schoolmates?

A. No, I don't recollect anything about it.

Q. She went to school more than a year, you think?

A. Certainly, she went more than a year. She went that much before she was big enough to learn much.

Q. How many years do you think, three or four years?

A. I would not like to say, because I might make a mistake, maybe.

Q. I want your best opinion.

A. I could not tell you. I don't recollect.

Q. You think she went more than two years, do you not?

A. I guess she went near about that much when very small.

Q. Then she went after that?

A. She went after that, but I could not begin to tell you how long, and for fear I would be mistaken I had better not say how long.

Q. The lawyer told you she was too old to have a guardian appointed?

A. He said she was over the age, and that I should give him the name of the next one.

Q. And you gave him the next one?

A. Yes, sir; Mary Ann. There was one dead between them.

Q. You gave him those that were alive? That is the only time you went to the orphans' court?

A. Yes, sir.

212 Q. You did not go there any other time?

A. No, sir.

Q. You did not sign any papers there in court?

A. No.

Q. The only place you signed any papers was this place, when you took her in with you?
A. Yes, sir.

Mrs. EMMA F. HERGESHEIMER sworn.

By Mr. MAYNE:

Q. You are the daughter of Mary Ann Becket, formerly Mary Ann Remsen, I believe?
A. Yes, sir.
Q. You have been identified here by Mrs. Wetzel as one of her granddaughters?
A. Yes, sir.
Q. Where do you live?
A. Haddonfield.
Q. Are you married to Mr. J. E. Hergesheimer?
A. Yes, sir.
Q. When were you married?
A. In 1882, the 5th day of June.
Q. Where?
A. At the parsonage of the Summerfield M. E. church.
Q. Have you any children?
A. Yes, sir; one.
Q. By Mr. Hergesheimer?
A. Yes, sir.
Q. When did you first have any knowledge of the matter which is the subject of this suit?
213 A. In 1891. I think it was between July and August. It was some time in the latter part of summer, but I cannot recollect just the date.

Cross-examination.

By Mr. KELLOGG:

Q. What is your mother's name?
A. Mary A. Becket.
Q. Formerly Mary Ann Remsen?
A. Yes, sir.
Q. George W. Remsen was your grandfather?
A. Yes, sir.
Q. You have heard of him?
A. Yes, sir; I have heard mother speak of him.
Q. You know your grandmother, Mrs. Wetzel?
A. Yes, sir.
Q. How many years have you known her?
A. Ever since I can remember anything at all.
Q. Have you known her intimately?
A. Yes, sir.
Q. It was generally known in the family that George W. Remsen was a Mexican soldier?
A. Yes, sir.

Q. And was in the army when he died?
A. Yes, sir.
Q. And that your grandmother got a pension?
A. Yes, sir.
Q. Do you know whether George W. Remsen left any property?
A. No, sir; I never heard of any.
Q. Did you ever inquire?
A. No, sir.
214 Q. Do you know whether your mother ever inquired?
A. No, sir; I never heard of her speak of any.
Q. You never knew your mother to inquire?
A. No, sir.
Q. She knew that her father was a Mexican soldier?
A. Yes, sir.
Q. And you heard her say that your grandmother got a pension?
A. Yes, sir; I have heard her say that.
Q. This was generally known in the family?
A. I never heard of it until I heard of it in 1891.
Q. I mean it was generally known in the family that he was a Mexican soldier and that your grandmother got a pension?
A. Oh; yes, sir.
Q. You say that you heard of the matter which is the subject of this suit about August, 1891?
A. Yes, sir. I cannot tell the exact date, but it was some time in the latter part of the summer.
Q. Did you hear the family speaking about a man that came from Minnesota here to see Mrs. Wetzel?
A. I heard of it through grandmother.
Q. How long after he had been here did you hear that such a man had been here?
A. I do not know. It was not very long after. I visited my grandmother every three or four weeks.
Q. And she said a man had been there a short time before?
A. Yes, sir.
Q. Well, a month or so?
215 A. Well, I guess it wasn't more than a month, probably six weeks.
Q. Did she say what he had been there for?
A. She just told me he came on and that there was some land that had belonged to grandfather and was sold, but I can't hardly remember what she did tell me. She told me about his being there, and I said I didn't know there was such a thing. She said there was, but it was a number of years back and was never spoken of until that time.
Q. Did she say that this land was in Minnesota?
A. I don't remember that she told me. I believe it was out West.
Q. And that this man had been on?
A. Yes, sir.
Q. And you think that was shortly after he had been there?
A. Yes, sir.

Q. Did she mention the name of the man as Mr. Hendrickson?
A. I think she did, but I am not positive.
Q. You say you visited her every three or four weeks?
A. Yes, sir.
Q. And this was about three or four weeks after this man had been there?
A. Probably six weeks, for I had a sick child at the time and didn't visit her so regularly.
Q. She said that there had been such a piece of land, but it had been a good many years ago?
A. She said there had been, but it was many years ago, and it hadn't been spoken of for a long time. I never heard of it through the family, at all.
Q. Did she say it was a land warrant that she had sold a good many years before?
A. Yes; she talked of it in that way, but I can't recollect what she did say.
Q. You recollect that she spoke of it as a land warrant that she got on account of her husband being in the Mexican war?
A. Yes, sir.
Q. And that she sold it a good many years ago?
A. Yes, sir.
Q. And that it had been located out West?
A. Yes, sir.
Q. Did you inquire particularly about the land?
A. No, sir; I didn't inquire anything about it.
Q. Did you, after that, make any inquiry to locate in regard to the land?
A. No, sir; none at all.
Q. How long after that was it that you next heard of it?
A. Well, I judge it was some few months, probably six months. I heard of it through grandmother. She would speak of it. She would say, "Have you heard any more of it?" And I would say, "No; what should I hear? I don't know anything about it." It may have been only three months.
Q. And then it ran along until August, 1891, when it was explained to you?
A. It was between July and August, I believe.
Q. The first time that this man was here, and when the old lady spoke to you about it, was some time about December or January, 1889 or 1890, was it not?
A. It was not 1889, I don't think.
Q. He was here in December, 1889?
A. Was he?
Q. Yes. Now, was it shortly after he was here?
A. Yes, sir.
Q. And not over six weeks?
A. I don't think so, but it seems to me it was in 1890 that I heard her speak about it.
Q. Well, probably January, 1890?
A. I could not say just the time.

By Mr. PORTER:

Q. Can you remember it by Christmas time?
A. No, I can't remember the time.

By Mr. KELLOGG:

Q. You made no inquiries after that?
A. No, sir; none at all.
Q. By whom was it finally explained to you all over again?
A. Mr. Mayne.
Q. That was when?
A. In 1891.
Q. Was that the time the heirs had a meeting?
A. Yes, sir.
Q. At whose office?
A. Mr. Mayne's.
Q. Between the time that your grandmother first mentioned this to you and this August, 1891, did you see any of the other heirs?
A. None outside of my sister.
Q. Which sister?
218 A. Mrs. Beckman.
Q. Did you talk with her about what you heard?
A. I just said I supposed it would not amount to anything.
Q. You told her what your grandmother told you?
A. She had seen grandmother and heard the same from her.
Q. How long was it after you saw your grandmother that you saw Mrs. Beckman?
A. I didn't see her for probably a month or two months.
Q. When you saw her did you speak to her about it?
A. I asked her if she had heard of it, and she said, "Oh, yes;" but we didn't talk about it after that time, as I didn't think it was worth while talking about it, and I didn't pay much attention to it.
Q. Did you tell her what your grandmother told you?
A. That I can't remember.
Q. But she knew it?
A. She knew about the same as I did.
Q. You talked about it?
A. We just merely spoke of it, and that is all.
Q. Did you see any of the other heirs during that time?
A. No, sir; I don't think I did, for being in the country I didn't visit them much.
Q. Do you know Harriet A. Van Zant?
A. Yes, sir.
Q. Where does she live?
A. That I can't tell you.
219 Q. Has she ever visited you?
A. Not since my mother's death. During my mother's life she used to call occasionally.
Q. So far as you know neither you nor your husband took any pains to look this matter up?
A. No, sir; none at all.

Q. Or took no pains to look up the estate of your grandfather?
A. None at all.
Q. You know that the probate court or the orphans' court is the one where estates are handled?
A. Yes, sir.
Q. Did you or your husband ever go to the orphans' court to see anything about his estate?
A. We never did.
Q. Did your mother ever tell you that your grandmother was appointed her guardian when she was young?
A. I never heard of it. She never spoke of it. I never knew there was anything to be guardian of.
Q. You never inquired?
A. No, sir; I never inquired.
Q. Where did you say you lived?
A. Haddonfield, New Jersey.
Q. Did you have any letters from Mr. Mayne?
A. A few, I believe.
Q. Have you got them with you?
A. No, sir; they were not kept, I guess.
Q. When did you receive those letters?
A. I could not tell you that.
Q. When did you first receive a letter from Mr. Mayne—
220 how long from the time when you first saw your grandmother and she told you about this land warrant?
A. I could not tell; a couple of months probably. I could not tell. Probably it was less time than that.
Q. What did Mr. Mayne write you?
A. Indeed I don't remember anything about that.
Q. It was in reference to the same matter?
A. Yes, sir.
Q. Did you answer the letter?
A. No, sir.
Q. Did he write you again?
A. Yes, sir; he wrote again.
Q. How long after the first time?
A. Not so very long, I guess, but I can't remember, for my husband always got the letters and brought them to me and read them and then disposed of them, and if any answer was required he answered them.
Q. What did Mr. Mayne say in any of those letters?
A. Well, in reference to the meeting he just wrote to us and told us he would like to see us at such a time. In one of them I know he said that we were to meet at his office at such a time.
Q. That wasn't the first letter?
A. I can't remember the first letter.
Q. What was said in some of those letters besides that, that you can remember?
A. No, I can't remember anything else. I can't call anything to mind.

221 Q. Did he state in some of those letters the nature of your claim?

A. I can't remember, I tell you, what was in them.

Signature of witness waived.

Adjourned until 3 o'clock p. m.

425 WALNUT STREET,
PHILADELPHIA, *December* 20, 1892—3 p. m.

C. HOWARD GUILBERT sworn.

By Mr. PORTER:

Q. You were the stenographer who took the notes of testimony on Saturday last at this hearing, were you not?

A. I was.

Q. Have you examined your notes since they have been transcribed to see whether the testimony of Mrs. Wetzel has been taken with accuracy?

A. The first page or two of her testimony was taken by Mr. Haas, and I relieved Mr. Haas and finished the examination of Mrs. Wetzel. I had the notes transcribed and revised them with my notes and found them to be exactly accurate as I had reported them.

Q. Have you any doubt as to the correctness of your transcript?

A. I have not.

222 Q. And you reported just what she said?

A. I did.

By Mr. KELLOGG:

Q. You mean by the first page or two, which you say was reported by Mr. Haas, the first page or two as written out on the typewriter?

A. Yes, sir; Mr. Haas took that.

Cross-examination.

By Mr. MAYNE:

Q. You recognized, did you not, that Mrs. Wetzel was somewhat hard of hearing?

A. I did.

Q. Questions had to be frequently repeated to her.

A. They did.

By Mr. KELLOGG:

Q. You are positive that you reported her correctly?

A. The witness was very easily understood by me and I am positive that I understood what the witness said, and so reported it.

By Mr. MAYNE:

Q. If there was any error, as I understand you, it was from the misunderstanding of the witness as to the question and not the answers as you took them from her?

Objection by Mr. Kellogg as incompetent, irrelevant and immaterial.

A. I took the answers as I heard the witness make them. I cannot say whether the witness did or did not understand the question.

Signature of witness waived.

223 GEORGE L. SCHAEFFER sworn:

By Mr. MAYNE:

Q. Where do you live?
A. 1013 North Front street.
Q. And your profession or calling is what?
A. I am a Methodist preacher.
Q. How long have you been pastor of the Front Street M. E. church?
A. I have been pastor there four years next March.
Q. Did you celebrate the marriage of Daniel C. Beckett and Mary Ann Beckett?
A. No, sir.
Q. Do you know what minister was stationed at the church at the time of their marriage?
A. According to the book it was John W. Arthur.
Q. What book do you refer to?
A. The church record.
Q. Where did you get the record?
A. I found it there when I went there.
Q. Was there any entry in that book of the celebration of that marriage?
A. I believe so (reading from book). "Daniel C. Beckett and Mary A. Remsen, June 29th, 1851. Ceremony performed by John W. Arthur."

No cross-examination.

Mr. KELLOGG: I object to the testimony as incompetent, irrelevant and immaterial.

Signature of witness waived.

224 WALLACE FLETCHER sworn.

By Mr. MAYNE:

Q. You are a clerk in the office of the prothonotary of the county of Philadelphia?
A. Custodian of books in the prothonotary's office.
Q. Have you the original record in the divorce proceedings of Jacob Heyer *vs.* Harriet Heyer, No. 20, of March term, 1864, of common pleas?
A. I have.

Mr. MAYNE: I offer in evidence the record, and ask the examiner to have a certified copy of it made under the act of Congress.

Mr. KELLOGG: I object to the record as incompetent, irrelevant and immaterial.

JAMES L. HINES sworn.

By Mr. MAYNE:

Q. Where do you reside?
A. At Gloucester City, Camden county, New Jersey.
Q. Did you know George W. Remsen and Elizabeth Hopkins?
A. I did.
Q. Were you present at their wedding?
A. I was.
Q. Do you know who celebrated that marriage?
225 A. I think it was Manning Force, pastor of St. George's Methodist church.
Q. Do you know about when that was?
A. I am unable to state exactly, for it has been a long while. I could not tell further than circumstances. It must be in the neighborhood of sixty-three years, from circumstances.
Q. Did you visit Mr. and Mrs. Remsen?
A. Yes, sir.
Q. Where did they live?
A. They lived in a court at the time they were married, running from Second street above Laurel, running east from Second street.
Q. Have you any knowledge of Mr. Remsen's services in the war?
A. No, sir; only my impression is that he was in the Mexican war, but I could not be positive about that. I don't know anything positive and only have that impression.
Q. Have you any knowledge of the marriage of his widow, to Paul Wetzel?
A. I have not.
Q. Did you know Isaac Ballou?
A. I did.
Q. Where did he die?
A. I could not tell.
Q. He was a magistrate?
A. He was a magistrate on Second street above Beaver.
Q. Did you know William F. Small?
A. No, sir; I don't recollect that name.

By Mr. KELLOGG:

226 Q. Ballou is dead?
A. Yes, sir.

By Mr. MAYNE:

Q. Do you know any of Mr. Remsen's children?
A. I do not.

No cross-examination.
Signature of witness waived.

JAMES W. HOPKINS sworn.

By Mr. MAYNE:

Q. What is the character of your business?
A. Carpenter and builder.
Q. Where do you reside?
A. 929 Charlotte street.

By Mr. BULLITT:

Q. Where? In Paris, London or where?
A. In Philadelphia.

By Mr. MAYNE:

Q. Do you know the widow of Paul Wetzel?
A. Yes, sir; she is my sister.
Q. Do you know whether she was married before that or not?
A. Yes, sir.
Q. To whom?
A. George W. Remsen.
Q. Have you any knowledge of his being a soldier in the Mexican war?
A. Yes, sir; and I may say this, that he died during the siege of Pueblo, Mexico, while Col. Childs was besieged there by the Mexican troops.
227 Q. You know his children, of course?
A. Yes, sir.
Q. You knew Laura Beckett, didn't you?
A. Yes, sir.
Q. Who was she?
A. She is a granddaughter.
Q. Who did she marry?
A. She married George W. Beckman.
Q. Were you present at their marriage?
A. I was not present at the marriage.
Q. Have you visited Mr. and Mrs. Beckman?
A. Yes, sir.
Q. At their house?
A. Yes, sir.
Q. Been introduced to him as her husband?
A. Oh; yes.
Q. Do you know about when they were married?
A. Being a business man, I don't pay much attention to that. I could not recollect the time, for it has been some years.
Q. You have seen John Wetzel Remsen out there in the room?
A. That is a son of Mrs. Wetzel.
Q. By which husband?
A. By George W. Remsen, who was killed at Pueblo, Mexico.
Q. You saw Mrs. Mary J. Remsen in the room, did you not?
A. Yes, sir; she is the wife of George W., a son of Mr. Remsen who died at Pueblo.
Q. Did you see Mrs. Harriet Van Zant?

228 A. She is the daughter of Mrs. Wetzel, her oldest daughter. She married a man named Heyer.

Q. Can you identify this lady as Mrs. Mary J. Remsen? (Indicating.)

A. Yes, sir.

Q. You say you know Harriet Heyer?

A. Yes, sir.

Q. Do you know when she was married?

A. I could not recollect the date. I know she married Jacob Heyer.

Q. About what time?

A. I could not locate it. It was prior to the war, though.

Q. Prior to the Mexican war?

A. No, sir; prior to the rebellion; because Jacob enlisted in the 23rd Pennsylvania, and I had his commission issued for him as captain by Governor Curtin.

Q. Then you are very well acquainted with Harriet A.?

A. Yes, sir.

Q. You are her uncle?

A. Yes, sir.

Q. Have you any knowledge as to her ability to write?

A. No, sir; I have not.

Q. Did you ever see her write?

A. Not as I know of.

Q. Have you any knowledge as to the present physical condition of Mrs. George W. Beckman?

229 A. Any more than she is confined to her house. She had a baby a week ago. Her son comes to my house every week, and he reported it.

Q. You are related by marriage in some way, are you not?

A. It is a kind of a mixed-up affair. I am uncle and brother-in-law to two of my sister's daughters. My wife's two brothers married two nieces of mine. It kind of mixes the family up.

Q. As I understand it your wife and Mrs. George W. Beckman are sisters. Who did you marry?

A. I married George Beckman's sister, and then he married my sister's daughter.

Cross-examination.

By Mr. KELLOGG:

Q. Where is Mrs. Van Zant's home at present?

A. I can't tell you that. I don't know. I don't know her residence. She lives here in the city.

Q. You say that George W. Remsen was in the Mexican war?

A. Yes, sir; the United States infantry.

Q. After the war his widow got a pension?

A. Yes, sir.

Q. And a land warrant?

A. Yes, sir.

Q. You knew about that?

A. Yes.

Q. And have known about it for a good many years?
A. Yes, sir; Gen. Small had charge of her affairs.
Q. She sold the land warrant?
A. She sold it.
230 Q. You knew that a great many years?
A. Through Poulson. I know she sold it by report.
Q. It was reported generally among the family that she had a land warrant and sold it?
A. Yes, sir.
Q. And generally known among the children?
A. I knew it.
Q. And it was generally known among the family?
A. I may say here that my father sold his about the same time. He was a soldier in the war of 1812.
Q. You say it was generally known among the family that she sold the land warrant?
A. Yes, I guess it was. I know I knew it. General Small sold it for her.
Q. And Harriet knew it, I suppose?
A. I suppose she did.
Q. You have heard her speak about it, haven't you?
A. No; I never heard the children speak of it. They were too young.
Q. I mean in after years?
A. No; I never heard of it. I believe she sold the land warrant to try and raise the children.
Q. You say your father sold his?
A. My father sold his.
Q. He was in the war of 1812?
A. Yes; it was afterwards, though.
Q. Who told you about this land warrant having been sold—Mrs. Remsen's warrant, I mean?
A. I think, probably, she did, herself.
231 Q. When did you first hear about this claim for this land out West?
A. Well, I paid no attention to it. I think it has been probably two years ago. My sister told me, Mrs. Remsen, somebody called to see her about it, hunting up the heirs of George W. Remsen.
Q. She told you about the time the man came here?
A. Some gentleman called there.
Q. And shortly after he called, she told you?
A. I stopped to see her.
Q. How long before that did she say the man had been there?
A. I can't call to mind. It was a short time, because every week or so I stopped over to my sister's to see the old lady.
Q. Was his name Hendrickson?
A. I do not think I ever heard his name.
Q. Wasn't it three years ago this month?
A. No; I don't think it has been that long.
Q. About the time she told you of this, it was talked up among the heirs, was it, that there was a claim out West?

A. So far as that is concerned I will tell you that there is not much visiting amongst those children at my house.

Q. Did you see them?

A. No; I scarcely ever see them.

Q. Did you see Mrs. Beckman?

A. I saw Laura; but some I see here today I have not seen since 1864.

232 Q. Laura Beckman; did you tell her what you had heard?

A. No.

Q. Did she say anything to you about it?

A. Well, she might have spoken to my wife about it; she never did to me. My sister told me about a lawyer, or whoever the gentleman was, from the West called to see her in reference to the sale of the warrant by Poulson to Mr. Taylor many years ago, but I paid no attention to the matter.

Q. She said a lawyer told her about it?

A. Yes, sir.

Q. And he was from the West?

A. He was from the West.

Q. You saw her within a few weeks after he had been here?

A. Yes, sir.

Q. Did she tell you anything else that he said?

A. Well, as I said before, I didn't tax my memory with it, for I placed very little confidence in it.

Q. How soon after that did Mrs. Beckman know it?

A. I can't say how soon she knew it; because this gentleman, whoever he was, went around to see them all, so I understood.

Q. From whom did you understand that—Mrs. Beckman?

A. Yes, sir; that he had been to see Mrs. Beckman and Mrs. Feedler.

Q. Who else?

A. That lady who was in here, Mrs. Mary Remsen, that he
233 had been to see the different ones, and then George Junior. He had been to see them, but I took no stock in it, at all. I had no interest in it and didn't bother about it.

Q. Mrs. Beckman said this?

A. She said the lawyer had been to see them. I know they were to call some place and give their depositions.

Q. How soon after this man was here from the West was that?

A. When I heard of it?

Q. When Mrs. Beckman said the lawyer went around to see them, how soon was it after the man was here from the West?

A. I didn't tax my memory. It might have been a couple of weeks.

Q. It was only a few weeks?

A. Yes, sir; all the information I got was from my sister.

Q. Shortly after this lawyer came here from the West you heard it, and it was generally known that there was such a claim?

A. That there was an imperfect title to this property which had been sold, or something of that character.

Q. Did your sister tell you what the property was or where it was?

A. No, sir; I never knew where it was located until a few days ago.

Q. I suppose you didn't have any personal interest in it?

A. I had no interest personally, and I told them two years
234 ago, if I am not interrupting you, when they spoke to me about it, I said, "You had better get somebody to go out there and look after it, and if you ain't got nobody if you will give me the information you have I will write to William Ralston, of Minneapolis, a friend of mine, and let him inquire," and they never bothered about it, and I didn't bother any more.

Q. Who did you tell that to?

A. I told it to my sister.

Q. Who was there when you said that?

A. My sister.

Q. Anybody else?

A. Well, my two sisters, Susan and Elizabeth, Mrs. Wetzel.

Q. This was at this time when she told you about it first?

A. When she told me about it I said if they would give me the information about it I would save them expense by writing to Bill Ralston—I always call him Bill—that lives in Minneapolis, and was raised there and came to Philadelphia and worked at carpentering and married a lady here, and then went back; that I would write to him and let him make inquiries about it.

Q. Did anybody write to him?

A. No; I never took any interest because they didn't seem to bother about it, and I had other business and I didn't bother about it.

Q. Did you say anything to Mrs. Beckman about writing out there?

A. No; I just merely spoke to my oldest sister, Mrs. Wetzel.

235 Q. If it was in December, 1889, when this man from the West was here, that was the time that you had your talk with your sister?

A. I do not know when it was, but I think it was a couple of years ago.

Q. It might have been three, might it not?

A. I don't think it has been that long.

Redirect examination.

By Mr. MAYNE:

Q. You don't mean to say that you ever had any conversation with any of the children in reference to this matter?

Objection by Mr. Kellogg as leading.

A. No.

Q. Did you have any information, at all, as to where this land was?

Objection by Mr. Kellogg as leading.

A. No, sir; nothing at all, only what my oldest sister said that this gentleman said that a railroad company was interested in it. Mrs. Wetzel told me that this gentleman who called to see her the first time said that there was a railroad company interested in it, but, as I say, I made no inquiries as I wasn't interested in it.

Q. Do you know whether or not after you had given that advice to employ somebody to look into the matter whether that was done?

A. They said they had employed some one.

Q. And the conversation that you had as relative to the
236 time was when the suggestion was made about employing some one to look after this matter, was it not?

A. Yes, sir.

Q. Prior to this had you ever heard the children speak of knowing that their father was entitled to any land?

A. No, sir; never.

By Mr. BULLITT:

Q. You say they told you that they had employed some one, that they had employed a lawyer to look into this claim?

A. Yes, sir.

Q. What was the name of the lawyer?

A. I don't think I ever asked his name, and I don't think they told me.

Q. Wasn't it Mr. Mayne?

A. It was some gentleman on Walnut street, but I don't remember the name; and I don't know that gentleman's name yet (indicating Mr. Mayne).

Q. Did they mention his name to you?

A. They might, but I didn't tax my memory, as I took no interest in the matter.

Mr. MAYNE: I will admit that I was employed by the Remsen heirs.

Q. At what time did they tell you that they had employed Mr. Mayne or had employed a lawyer? How long ago was it?

A. At the time of the visit of this gentleman from Minneapolis.

Q. You do not know the date of the visit of this gentleman from Minneapolis?

A. No, sir.

237 Q. You say that they didn't mention the name of the lawyer that they employed?

A. No, sir.

Q. But they did tell you within a short time after this gentleman came to Philadelphia from the West that they had employed a lawyer?

A. That they had made arrangements with a lawyer on Walnut street for to prosecute the claim.

Q. Walnut street, here in Philadelphia, Pennsylvania?

A. Yes, sir.

Q. About how long after this gentleman came from the West to

Philadelphia did they tell you that they had employed a lawyer on Walnut street?

A. It might have been two or three months after his visit.

Q. You are not positive as to the time?

A. No, sir; because, as I say, I went to see my sister every week or so, and she may have mentioned it about the time that the gentleman visited her.

Q. Who told you that a lawyer had been employed?

A. My sister.

Q. Mrs. Wetzel, one of the plaintiffs in this action?

A. Yes, sir.

Q. Did any of the other Remsen heirs tell you that?

A. No, sir.

Q. Have you ever had any conversation with any of the others?

A. None except Mrs. Laura Beckman, who visited my
238 house. The rest of them, they are no visitors, and I don't think they ever came to my house except when my daughter was dead.

Q. You are not positive, and do not know how long it was after this gentleman came from the West that Mrs. Wetzel told you that counsel had been employed to represent the heirs; you are not positive as to the time?

A. I could not give the date, for as I say I did not tax my memory about it, but it was shortly after his visit when she told me that they had employed counsel for to look after this matter.

Q. And it was the same time that she told you about this gentleman from the West having been here?

A. I heard of that about a week after his having been there.

Q. And Mrs. Wetzel told you within a very short time after this gentleman from the West had been here, that he had been here, and at the same time told you that counsel had been employed?

A. I think he was there a couple of times to see her.

Q. Mrs. Wetzel told you a very short time after this gentleman from the West had been here in Philadelphia, that he had been here, and at the same time told you that the heirs had employed counsel?

A. She told me that this gentleman had to return home, and had recommended some gentleman on Walnut street, and had left the matter in his hands to attend to in his absence.

Q. That was a very short time after that gentleman had been here?

A. Yes, sir.

239 Q. You don't recollect positively the exact time when she told you that?

A. No, sir.

Q. You cannot give the month, or the date of the month?

A. No, sir; I did not tax my memory. I was not interested, and busy with my own business. I think it was a couple of years ago.

Q. You won't be certain as to when it was?

A. No, sir.

Signature of witness waived.

Mr. BULLITT: On behalf of the Minnesota Transfer Railway Company, I withdraw all objection to the admission in evidence of either the original judgment-roll, or a duly certified copy thereof, in the case of Jacob Heyer *vs.* Harriet Heyer, in the court of common pleas for the county of Philadelphia, of March term, 1864, No. 20.

Mr. KELLOGG: The other defendants also withdraw their objection.

MABEL REMSEN sworn.

By Mr. MAYNE:

Q. You are a daughter of George W. A. Remsen and Mary A. Remsen?

A. Yes, sir.

Q. And reside where?

240 A. No. 2504 Howard street.

Q. How old are you?

A. Twenty-one years of age.

Q. You are represented in this proceeding by Mr. Parkensteiner, as your guardian?

A. Yes, sir.

Q. Had you any knowledge of the matter which is the subject of this suit, prior to that meeting in August, 1891, at my office?

A. No, sir.

Cross-examination.

By Mr. KELLOGG:

Q. What is your mother's name?

A. Mary A. Remsen.

Q. Who was examined as a witness the other day?

A. Yes, sir.

Q. She said that when the gentleman was here from the West, she went over with you to see your grandmother; is that true?

A. I don't know anything about that.

Q. She said that she told you and your brother George about a gentleman being here from St. Paul.

A. Yes, I know there was a gentleman here from St. Paul.

Q. Your mother told you?

A. Yes, sir.

Q. Do you remember when that was?

A. No, sir; I do not.

Q. It was not long before this meeting at Mr. Mayne's office?

241 A. I could not tell you when it was.

Q. You remember your mother coming home and telling you that a gentleman had been here from St. Paul?

A. She told me that; yes, sir.

Q. And that he was here about a land claim? In reference to an old land warrant of your grandfather's?

A. She said nothing about a land warrant. She said a gentleman was here and said there was land belonging to George Remsen.
Q. Where did he say it was?
A. He would not give us any satisfaction where it was.
Q. Did you talk with him?
A. No, sir; I did not.
Q. Your mother did?
A. Yes, sir.
Q. Was your brother George present? Did he hear it?
A. I don't know.
Q. I suppose you have been told that your grandfather was a soldier in the Mexican war?
A. Yes, sir.
Q. You have known that a good many years?
A. No, sir; it is not very long that I know it.
Q. About the time this man was here from the West?
A. Well, that I could not tell you.
Q. Did you ever hear your mother speak of the fact that your grandfather died in the Mexican war?
A. Not until lately.
242 Q. About the time this man was here from the West?
A. I don't know exactly what time it was.
Q. You remember the circumstance of your mother coming home and telling you about this man from the West?
A. Yes, sir.
Q. Did she tell you about the same time that she saw this man?
A. I could not tell you that.
Q. It was the time that he was here?
A. I could not say.
Q. She came home and said that she had seen a man from the West?
A. She said she had seen this man from out there.

By Mr. BULLITT:

Q. You say that your mother told you some time ago that she had seen a man that came on from the West in regard to a certain claim of the Remsen heirs to some property situated out West somewhere?
A. Yes, sir.
Q. You don't recollect the date when she told you that?
A. No, sir; I do not.
Q. But she told you that within a short time after she had seen this man from the West?
A. Well, I don't know when it was.
Q. But just as well as you know it was within a short time after she had seen this man in Philadelphia?
A. I guess it could not have been long.
243 Q. She did not give you any of the details of this conversation that she had with this gentleman from the West?
A. No, sir.

Q. And you don't know what took place between them at that time?

A. No, sir.

Q. You said that he had come on here and had seen your mother, and the other heirs, in regard to certain land situated somewhere out West?

A. Yes, sir; that is what he came for.

Q. Then afterwards you attended a meeting at Mr. Mayne's office, did you not?

A. I don't think I did.

Q. You did not attend that meeting, but you knew the meeting was to be held there? You heard your mother mention it?

A. I don't remember anything about that meeting.

Q. Your mother afterwards, after telling you about meeting this gentleman from the West, told you about the nature of this claim of the Remsen heirs?

A. No, sir; she never mentioned it to me.

Q. Didn't she mention it to you in August, 1891?

A. Yes, sir; I knew it then.

Q. Didn't you know the Remsen heirs, of which you are one, claimed a tract of land which had been located by a military warrant issued to your grandfather, George W. Remsen, for being a soldier in the Mexican war?

A. Yes, sir.

Q. That was in August, 1891?

A. I know it was late in the summer.

244 Q. It was right after this meeting which the heirs had at Mr. Mayne's office?

A. I don't know exactly when it was, but I know it was some time late in the summer.

Q. You knew in the summer of 1891 that your grandfather had received a military warrant, and that that had been located in certain property in Ramsey county, Minnesota, and that the heirs claimed it at that time?

Mr. MAYNE: I move to have that question stricken out, for this reason: It is purely misleading, and counsel are proceeding to question a very young witness, suggesting to her that a land warrant was issued to her grandfather, when they know as a matter of fact that it was not; suggesting to the witness that she was present at a meeting at my office, and that she had heard described the land subject to this controversy.

By Mr. BULLITT:

Q. Within a short time after this interview which was held at Mr. Mayne's office, some one, who was that of the Remsen heirs, told you what the meeting had been held for?

A. I don't remember anything about that meeting.

Q. Didn't you have a conversation with your mother?

A. I never bothered anything about it.

Q. After this meeting had been held in the latter part of the

summer of 1891, did you know, or did anybody tell you, that your grandfather, George W. Remsen, who was a soldier in the
245 Mexican war, was entitled to a land warrant from the United States Government, or that the heirs were entitled to a land warrant from the United States Government?

A. That I don't remember.

Q. Do you know that a military land warrant was issued to the heirs of George W. Remsen, your grandfather?

A. No, sir; I don't know anything about a land warrant.

Q. Do you know anything about the claims of the heirs of George W. Remsen to this land?

A. I don't quite understand it.

Q. Have you ever heard of this claim to this land which is described in this suit?

A. I heard of it just lately.

Q. Didn't you hear of it in the summer of 1891?

A. Indeed I could not tell you.

Q. Don't you know whether you heard of it in the summer of 1891, or not?

A. The first time I ever heard anything about it was this summer a year ago. I have never bothered anything about it.

Q. You have not paid much attention to it?

A. No, sir; I have not.

Q. And what you heard in the summer of 1891 was simply that the heirs of George W. Remsen claimed the land which is described in this complaint, and that the land was in Minnesota?

A. Yes, sir.

Q. In regard to the facts constituting that claim, you know
246 nothing more than it was based on a land warrant issued to the heirs of George W. Remsen, your grandfather?

A. I don't know what. Everything I left to mamma, and I have never bothered anything about it.

By Mr. PORTER:

Q. When did you come of age?

A. The 28th of last May.

Q. Had you a guardian appointed?

A. Yes, sir.

Q. Who was that?

A. Mr. Parkensteiner.

Q. When was he appointed?

A. I don't know.

Q. Didn't you go to court and ask for his appointment?

A. No, sir.

Q. Was it a good many years ago?

A. No, it was not so long ago. Not long before I was twenty-one.

Q. Can you fix the time within a year?

A. I could not fix any time.

Q. Was it this year?

A. To tell the truth I cannot tell you.

Q. Who is Mr. Parkensteiner?

A. I am not acquainted with the gentleman.
Q. Did you ever see him personally?
A. No, sir.
Q. Did you ever sign any paper asking for his appointment as your guardian?
A. I don't know.
247 Q. You cannot remember whether you did or did not?
A. No, sir.
Q. Did you go to court?
A. No, sir.
Q. You have referred to a conversation that you had with your mother shortly after she saw this gentleman who came from the West. I want you to try and fix that date as well as you can. You are younger than some of the witnesses and I trust a little more to your memory.
A. Indeed I could not remember.
Q. Can you fix last Christmas in your mind?
A. Yes, sir.
Q. Can you fix the Christmas before that in your mind?
A. Yes, I can fix every Christmas.
Q. Can you fix the Christmas of 1889? That is when you were 18, or about. Can you remember any gifts that you received at that time?
A. No, sir.

Signature of witness waived.

It is hereby agreed and stipulated that the taking of further testimony in this case on behalf of both the plaintiffs and defendants is hereby adjourned until such a time as is hereafter agreed upon by the parties hereto, such testimony to be taken at such agreed time before Henry R. Edmunds, Esq., of Philadelphia, Penn., and at such other places as may be agreed upon by the parties.
248 It is further agreed that the examiner may send the exhibits and testimony taken before him by express to Oscar B. Hillis, clerk of the U. S. circuit court, St. Paul Minn.

Defendants' Evidence.

JOHN R. TATUM, having been duly affirmed, was examined as follows:

By Mr. KELLOGG:

Q. Where do you reside?
A. Newcastle county, Delaware.
Q. How long have you lived there?
A. All my life. Either in Wilmington or there.
Q. How old are you?
A. I am in my sixty-fourth year.
Q. Did you ever know John W. Tatum in his lifetime?
A. Yes, sir; he was my father.
Q. When did he die?

A. He died in 1866, in the sixth month, June, 1866, and I think on the 15th day. That is my recollection, but I could not say with positive certainty as to the day.

Q. How many children did he leave surviving him?

A. Three.

Q. What are their names?

A. Samuel C. Tatum, John R. Tatum and Hannah Tatum, in the order of their ages.

Q. Are they alive now?

A. Samuel C. Tatum is not. The other two are.

249 Q. Do you remember when Samuel C. Tatum died?

A. No. I am not certain as to the year. I think five or six years ago. I think in the spring he died. I cannot give the year certainly. My impression would be about five years last spring, but I cannot give the year certainly.

Q. (Defendants' Exhibit No. 1, 12–19–'92, H. R. E., shown witness.) What is this instrument?

A. That is the deed for my one-third interest to Samuel C. Tatum.

Defendants' counsel offered in evidence Exhibit No. 1, 12–19–'92, H. R. E., being a certified copy of a deed from John R. Tatum and Louisa R. Tatum to Samuel C. Tatum.

Q. This purports to be a deed of an undivided one-third of the southwest corner of section No. 28, in township 29, north of range No. 23, west of the fourth parallel meridian, containing according to the United States Government survey one hundred and sixty acres, the land being situated in Ramsey county, in the State of Minnesota. Do you remember this transaction?

A. I do.

Q. Did you and your wife make this deed?

A. We did.

Q. What consideration did you receive for it?

A. $3,350.

Q. In what way was it paid?

A. A house deeded to me by my brother and his wife, and the balance in cash.

Q. What amount in cash?

250 A. My impression is now, it was $1,350 for the house and the balance in cash. It was either $1,300 or $1,350 for the house, and the remainder in cash.

Q. When was it paid with reference to the date of this deed?

A. I presume it was paid immediately after.

Q. Was it within a reasonable time of the date of this deed?

A. I suppose so.

Q. At that time did you know anything about the source of the title to this land described in this deed?

A. I knew it came from Pennock Pusey to my father. That is all I know about it.

Q. Had you ever examined the title to it?

A. I had not.

Q. Did you ever see the patent from the Government?
A. I did not.
Q. At that time had you ever heard whether the title came through a land warrant issued to the widow and heirs of George W. Remsen?
A. I have no recollection of ever hearing anything of the kind.
Q. When did you first hear that claim made?
A. Of the claim of the Remsens?
Q. Yes.
A. Within a few months. Within the summer of 1892.
Q. Had you ever heard it claimed or stated that this land was located by virtue of any land warrant issued to Remsen or any one else?
251 A. I have no recollection of hearing anything about it, except it came to my father through Pennock Pusey, until this claim was put in.
Q. That is all you ever heard about it?
A. That is all I ever heard about it until within a few months.
Q. Do you remember of Hannah Tatum deeding her interest in any of this land?
A. After the death of Samuel C. Tatum, Hannah Tatum sold her interest in the remaining land and also in the obligations given to pay her for what had been sold to the estate of my brother, Samuel C. Tatum.
Q. To whom?
A. Eleanor Tatum, his widow, and his children Mary C. Tatum, Amy T. Hilles, and Elizabeth T. Long.
Q. Who managed the business for her?
A. I did. I negotiated the transfer for her.
Q. What considerations did she receive for it?

Objected to, that the deed is the best evidence.

A. $35,000. That is my recollection.
Q. Who managed the business?
A. I managed the business for her.
Q. Was it paid in money?
A. Yes, sir; it was all paid in money, but not all at once. It was settled at the time in money and notes. It has all been paid now.
Q. How long after the transaction was it paid?
A It was paid $10,000 in cash and the balance in instalments of $5,000, semi-annually. That is my recollection.
Q. It was within a few years?
252 A. Yes, sir. It was a recent transaction. It has been closed within a year or so back.
Q. Was it closed more than a year ago?
A. I think it was. About eighteen months. I cannot say.
Q. The first payment was made at the date of the deed?
A. Yes, sir. And $5,000 in semi-annual instalments afterwards. The deed would show.

Q. At the time you negotiated this sale to these grantees did you inform them anything about the title?

A. I did not.

Q. At that time did you know anything more about it than you have testified here?

A. I did not. I never heard of any question of the title until within the last year.

Cross-examination.

By Mr. MAYNE:

Q. As I understand you, you took whatever interest you had in this land in the condition in which it came to you from your ancestor, without making any inquiries at all about it?

A. I did not inquire into the title. I presumed the title was good and made no inquiries.

Q. You never looked at it?

A. I never did.

Q. The patent was recited in the will?

A. No. This property was not mentioned in my father's will. It was part of his residuary estate. He left special legacies, and
253 the rest of his estate to be divided equally between his three children. This was part of the estate. I do not think it was alluded to at all. I do not think it was mentioned in the will.

Q. You had seen the deed from Pusey to your father, had you not?

A. I do not think I ever saw it.

Q. In your conveyance you had described this land as the southwest corner of section 28, 29 north, 23 west?

A. I presume it is described in the deed.

Q. You knew the description was the location of a land claim under the Government, did you not?

A. I presumed it came from the Government, but I had no knowledge of it.

Q. You knew that by the peculiarity of the description, did you not?

A. Yes, sir; if I read it I did. I presume so.

Q. You never looked into the patent?

A. No. I have no recollection of ever making an examination at all.

Signature waived.

Adjourned until 2 p. m.

It is admitted that Isaac Boileau and William F. Small, who were named as witnesses to the certified copy of the assignment of the land warrant No. 28811, being a part of Exhibit No. 4, offered in evidence, are the persons described as Isaac Boileau and
254 William F. Small, by the witness, Harriet A. Remsen, and that they are both dead, and have been for more than ten years.

PENNOCK PUSEY, having been duly sworn, was examined as follows:

By Mr. KELLOGG:

Q. Where do you reside?
A. It is hard to say just now. Wilmington, Delaware, I regard as my present home more that any other place.
Q. What is your age?
A. Sixty-seven.
Q. Were you ever the owner of one hundred and sixty acres of land described as the southwest corner of section 28, township No. 29, north of range 23 west, in Ramsey county, State of Minnesota?
A. Yes, sir.
Q. From whom did you get a deed of that land?
A. Allen Pierse and wife.
Q. Did you know Mr. Pierse personally?
A. Yes, sir.
Q. Is he alive?
A. I do not know certainly. I think not.
Q. Do you know, if he is alive, where he is?
A. I do not.
Q. About how old a man was he in 1854?
A. At a rough guess he was at my age now perhaps. Perhaps not so old. He was an old man.
Q. (Paper handed witness marked Defendants' Exhibit No. 2, 12-19-'92, H. R. E.) What is that?
255 A. Title bond. Bond for a deed.
Q. Whom from?
A. Allen Pierse to myself.
Q. For that property?
A. Yes, sir.

Paper marked Defendants' Exhibit No. 2, 12-19-'92, H. R. E., offered in evidence by defendants' counsel.

Q. (Paper marked Defendants' Exhibit No. 3, 12-19-'92, H. R. E., shown witness.) What is that instrument shown you?
A. This seems to be a copy of the deed from Mr. Pierse and wife to me.

Certified copy of the deed from Allen Pierse and wife to Pennock Pusey of this land, marked Defendants' Exhibit No. 3, 12-19-'92, H. R. E., offered in evidence by defendants' counsel.

Q. What did you pay for that land?
A. $18 an acre, to my recollection.
Q. $2,880?
A. Yes, sir.
Q. In cash?
A. I think I paid him half cash when he gave me the bond for a deed and the other upon receiving the deed.
Q. (Deed shown witness being marked Defendants' Exhibit No.

4, 12-19-'92, H. R. E., being deed from Pennock Pusey to John W. Tatum.) What is that paper?

A. That is the deed itself. It is in my own writing. The body of the deed and the signature are all in my handwriting.

256 Deed marked Defendants' Exhibit No. 4, 12-19-'92, H. R. E., offered in evidence by defendants' counsel.

Q. What did you receive from Mr. Tatum for that land?

A. I borrowed $3,000 of him and I could not pay it and I deeded him the land to pay the debt.

Q. You received the money from him in cash?

A. Yes, sir.

Q. Did you ever know Nathan D. C. Taylor?

A. No, sir.

Q. Did you ever know Henry McKenty?

A. Yes, sir.

Q. I mean the Henry McKenty who deeded this land to Allen Pierse.

A. Yes, sir. That is the same person.

Q. Is he alive?

A. No, sir.

Q. At the time you purchased this land of Mr. Pierse did you know the source of the title?

A. I do not quite understand the question. I had an abstract.

Q. Did that abstract show a copy of the patent from the United States to Nathan D. C. Taylor?

A. No, sir.

Q. What did it show?

A. It showed simply the transfers upon the records. It carried it back to the issue of the patent, which satisfied me.

Q. In about what words would one of these abstracts be?

Objected to.

Q. Have you got the abstract that you had at that time?

257 A. No, sir.

Q. What did you do with it?

A. I do not know. I could not tell where that is at all. It was very short.

Q. Did the abstract contain a copy of any of the deeds in the chain of title?

A. No, sir.

Q. At the time you purchased that land did you know anything about any claim that it was located by virtue of a land warrant issued to the widow of George W. Remsen?

A. No, sir.

Q. Or that the widow and heirs of George W. Remsen had any or made any claim to it?

A. No, sir; I never heard of the claim at all until recently. I never heard their name.

Q. How recently?

A. Since this suit was published.

Q. You never did until the commencement of this suit hear any claim that this land was procured by or through a land warrant?

A. None whatever, except what appeared in the abstract. It showed I think on the abstract.

Q. Did the abstract show anything about any land warrant?

A. No, sir; except simply I think it did show that it was located upon a land warrant.

Q. I show you an abstract. (Paper handed witness.)

A. That is about the style.

Q. Is that what the abstract showed that you had?

258 Objected to.

A. It was not a printed abstract, but it was very similar. That is the general style of it.

Q. Look at the first entry of that abstract.

Paper marked for identification, Defendants' Exhibit No. 5, 12–19–'92, H. R. E.

Q. (The first entry upon paper marked Defendants' Exhibit No. 5, 12–19–'92, H. R. E., shown witness.) Did the abstract you had show anything more than that first entry does?

Objected to.

A. No. It showed nothing more. I think there is one word that was usually used for "land warrant," used the word "located," when it was located by land warrant and when it was purchased by cash "entered."

Q. The word "land warrant"?

A. Yes, sir.

Q. That is the entry of this land?

A. Yes, sir.

Q. Do you recollect as to this abstract?

A. I do not recollect particularly. I do not know that that was invariable, but it was general. "Located" and "entered."

Q. State whether you have any recollection before the commencement of this suit that you knew whether that was located by land warrant or not?

A. I cannot answer. I do not think I did. The only way I should judge it was that I remember examining the abstract and traced it back to the patent issued, and was satisfied and did not go any further. I do not remember whether that patent was
259 issued upon money purchase or upon land warrant issued. I do not remember now what it was.

By Mr. BULLITT:

Q. Did you at any time prior to the commencement of this action know, or had you ever heard that the heirs of George W. Remsen had any interest whatever or claimed any interest whatever in the land involved in this controversy?

Defendants' Exhibit No. 5, 12–19–'92, H. R. E., offered in evidence by defendan-s' counsel.

Objected to.

A. Never.

By Mr. KELLOGG:

Q. Do you know whether the Minnesota & Pacific railroad was ever built across this land?

A. Yes, sir.

Q. In what year was the Minnesota & Pacific railroad built across this land?

A. I won't be absolutely certain, but I think 1862.

Q. Did you ever make any deed to that company?

A. Yes, sir.

Q. Defendants' Exhibit No. 6, 12-19-'92, H. R. E., being a certified copy of the deed, handed witness, and he is asked What is that deed?

Objected to by plaintiffs' counsel, as deed speaks for itself.

A. That seems to be a copy of the deed of right of way that I gave to the company. A strip of land one hundred feet in width.

260 Certified copy of deed, being marked Defendants' Exhibit No. 6, 12-19-'92, H. R. E., offered in evidence by defendants' counsel.

It is agreed that the copies which have been produced and offered in evidence as certified copies may be so considered and used with the same force and effect as if they had been certified under the act of Congress, with leave to the complainants to put in duly certified abstracts of the same records.

Q. Does that railroad remain there to this day?

A. I am not certain about that.

Q. Did it when you were in Minnesota last?

A. I am not certain about that quite. The traveled road I think is maybe a little further west. I think they use that still as a freight road. I have not been there for a number of years, and I do not know what they have done. I have not examined it.

Cross-examination.

By Mr. MAYNE:

Q. You lived in St. Paul at the time you received this conveyance from Allen Pierse and wife?

A. Yes, sir.

Q. And had lived there for how long a period prior to that?

A. From May, 1854, until 1883, continuously, I lived there.

Q. Your abstract showed up to the patent from the Government to this land?

A. Yes, sir.

Q. But you never examined the patent?

A. Never examined it. Never saw it.

261 Q. Or never authorized any one to examine it for you?

A. No, sir.

Signature waived.

HANNAH TATUM, having been duly affirmed, was examined as follows:

By Mr. KELLOGG:

Q. Do you recollect of having an interest in some land near St. Paul?
A. Yes, sir; of course I do.
Q. A quarter section of land?
A. Yes, sir.
Q. The southwest corner of section 28, township 29, range 23, Ramsey county, Minnesota. You recollect that, do you?
A. Yes, sir.
Q. You got it as heir of your father?
A. Yes, sir.
Q. Did you ever have any knowledge about the title or whom it came from?
A. No, sir.
Q. You knew nothing about the title or where it came from?
A. No, sir.
Q. Never have known anything about the title?
A. No, sir.
Q. Did you ever at any time prior to the commencement of this action know that there was any claim made to the land or any part of it by anybody by the name of Remsen or any one else?
262 A. No, sir; never heard of them.

Cross-examination.

By Mr. MAYNE:

Q. You did not know anything about it?
A. No, sir; I did not.
Q. Never made any inquiries?
A. No, sir. My brother attended to it.

Signature waived.

Deposition of Edwin B. Hay, Esq., a witness, taken before Anson S. Taylor, a United States commissioner of the supreme court of the District of Columbia.

Present: William C. Mayne, Esq., for complainants; Frank B. Kellogg and M. D. Grover, Esq., for defendants.

EDWIN B. HAY, being duly sworn, deposes and says (original land warrant No. 28811, being for one hundred and sixty acres (160) under the act of February 11, 1847, being the land warrant in question, being accepted and admitted as the warrant in question): I am an expert in handwriting, having been twenty-six (26) years engaged in such profession, and having testified in the courts and before Congress and the executive departments and in Government

cases have been recognized and accepted as such. I have
263 examined the paper above stated, which is now submitted to me, and upon which appears the name

her
Elizabeth x Remsen
mark

and Harriet A. Remsen, and by the comparison of the two writings I am of the opinion that they were written by the same person.

No cross-examination.

It is admitted by the counsel for the complainants that the signature of Isaac Boileau as a witness to the assignment on the back of said warrant heretofore described, and also to the acknowledgment thereof, is the genuine signature of said Isaac Boilleau, and also the signature of William F. Small as a witness to said assignment is the genuine signature of said William F. Small.

E. B. HAY.

Meeting held at the office of the examiner, Henry R. Edmunds, Esq., No. 425 Walnut street, Philadelphia, Pa., at 2.30 o'clock a. m.

Present: The examiner, Henry R. Edmunds, Esq., William C. Mayne, Esq., for complainants; Frank B. Kellogg, Esq., for defendants; M. D. Grover, Esq., and William W. Porter, Esq., for defendants.

GEORGE W. REMSEN, a witness produced by complainants, duly sworn and examined, testified as follows:

By Mr. MAYNE:

264 Q. Mr. Remsen, you are the son of George W. A. Remsen and Mary J. Remsen, are you not?

A. I am.

Q. What is your mother's maiden name?

A. Mary J. Derbyshire.

Q. Where do you reside, Mr. Remsen?

A. 2317 Brevere street, Philadelphia.

Q. Do you know Mrs. Wetzel?

A. I do.

Q. In what way is she related to you?

A. My grandmother.

Q. And your grandfather, what was his name?

A. George W. Remsen.

Q. Mrs. Wetzel is the widow of George W. Remsen?

A. Yes, sir.

Q. You are a party complainant in the bill brought in the circuit court of Minnesota?

A. I am.

Q. When did you first have knowledge of the adverse occupancy of the land subject to that bill?

A. Near as I can tell it was about the eighteenth of August, 1891.

Q. Did you know Harriet Van Zandt?

A. I did; I know her.
Q. Is she related to you?
A. My father's sister.
Q. Do you know whether she was previously married to her marriage with Mr. Van Zandt?
A. I heard that she was.
Q. To who, Mr. Remsen?
265 A. I believe to Jacob Heyer, I think his name was Jacob, but I am not sure.

Cross-examined by Mr. KELLOGG, on behalf of all the defendants:

Q. Your grandfather was George W. Remsen, was he not?
A. He was.
Q. He has been dead a good many years?
A. He has.
Q. Did you ever hear where he died?
A. Yes, sir; I heard he died somewhere in Mexico.
Q. What was he doing in Mexico?
A. I believe he was a soldier.
Q. You have understood that he was a soldier in the Mexican war?
A. Not till lately.
Q. You never knew until lately that your grandfather was a soldier?
A. I knew he was a soldier.
Q. How many years have you known that?
A. I have known that since I was quite small.
Q. How old are you?
A. I am over twenty-six years of age.
Q. You knew he was a soldier since you were small?
A. Yes, sir.
Q. In what war?
A. I did not know that.
Q. You didn't suppose it was in the war of 1812?
A. Hardly.
266 Q. You are familiar with what wars this country has had?
A. I don't know that I could enumerate all of them.
Q. You knew that it was not the late rebellion, didn't you?
A. I couldn't say positive whether it was or not.
Q. Now as a matter of fact you knew that he was a soldier in the Mexican war?
A. I did not until a few years ago.
Q. How many years ago?
A. I could not say positive how many years ago.
Q. Give us an idea.
A. I have heard so much talk about it, that I cannot remember.
Q. Well you heard it before this case was started?
A. I could not say positive.
Q. You want to be understood as being the only one of all the

heirs that did not know that your grandfather was a soldier in the Mexican war?

A. I do not know anything about what the others heard, I can only answer for myself.

Q. Well you knew he was a soldier?

A. Yes, sir.

Q. And died in the army?

A. Died in Mexico.

Q. Well he was a soldier?

A. Yes, sir; I believe he was a soldier.

Q. That you knew?

A. Yes, sir, I have been told it.

Q. Then you supposed, did you not, it was in the Mexican war. Did you not?

267 A. I did not suppose anything about it, I was too young to know.

Q. You never heard it mentioned during the years of your life until this case was brought, did you?

A. I could not say positive if I did or did not hear.

Q. You knew your grandmother drew a pension did you not?

A. Yes, sir.

Q. And you knew that a good many years?

A. I have known that since I was—I could not say how old I was.

Q. Quite young?

A. Very likely.

Q. You supposed that she drew that pension because of the duty of her husband in some war, did you not?

A. Yes, sir.

Q. Did you know that she got a bounty land warrant?

A. I never knew it until this case started.

Q. Did you ever make any inquiry?

A. I never did.

Q. You have known your grandmother very long, I suppose?

A. Yes, sir.

Q. For a good many years?

A. Ever since I can remember.

Q. How frequently have you seen her?

A. My grandmother lived at our house for quite a number of years.

268 Q. How many years has she ceased living there?

A. As near as I can tell about seven.

Q. You have heard her talk about her husband as having been in the army, haven't you?

A. Very seldom.

Q. I did not ask you how seldom, but I asked you whether you had heard it or not.

A. Yes, sir, she told me when I was small.

Q. Do you remember what she said about it?

A. I could not recall it now.

Signature waived.

Testimony by agreement to be reduced to typewriting four copies, two to Mr. Mayne and one to the other side and the original to be transferred by the commissioner to court.

Mrs. MAGGIE BECKMAN, being duly sworn was examined as follows:

I reside at 2019 Palethrope street, Philadelphia; am a married woman.

By Mr. MAYNE:

Q. To whom are you married?
A. George W. Beckman.
Q. When were you married?
A. The 9th of July, 1878.
Q. You are the daughter of whom?
A. Mary A. Becket, Remsen was her maiden name.
269 Q. Mrs. Beckman you are one of the parties complainants in the bill of equity brought in the eastern district of Minnesota?
A. Yes, sir.
Q. When were you first apprised of the matters subject to that bill?
A. The latter part of August, 1891.
Q. Do you know Harriet Van Zandt?
A. Yes, sir.
Q. Where does she live?
A. She generally makes her home at 2017, Paletrope street.
Q. That is right next door to you?
A. Yes, sir.
Q. Had you any knowledge of her presence here before Mr. Edmunds the examiner?
A. No, sir, I was sick at the time.

Cross-examined by Mr. KELLOGG, on behalf of all the defendants:

Q. You live near Mrs. Van Zandt?
A. Next door.
Q. How long have you lived next door of Mrs. Van Zandt?
A. Very near four years, her daughter moved there about three years ago.
Q. She moved there with Mrs. Van Zandt?
A. Her daughter lives there and her mother makes her home with her daughter, at times she sews away, and then makes that her home. She made her home before that time with her but not in that neighborhood.
270 Q. Then during these three years that you speak about she has made her home with her daughter, next-door neighbor to you?
A. Yes, sir.
Q. Emma F. Hergermeyer is your sister?
A. Yes, sir.

Q. You have known a good many years that your grandfather, George W. Remsen, was a Mexican soldier, did you not?

A. I knew he was a soldier and I knew he died away, and I judged he was a Mexican soldier but I did not know exactly.

Q. Well, what war did you think he was a soldier in?

A. I did not think anything about it; I supposed it was the Mexican war from the date.

Q. Your sister testified that it was generally known in the family, is that true?

A. I suppose it was, my sister was more at home.

Q. Well, you supposed that he was a Mexican soldier, and have so supposed for a good many years?

A. Yes, sir.

Q. You knew your sister came up here and testified, did you not?

A. I knew when she came.

Q. How far does she live from where you reside?

A. I don't know the exact miles; she lives at Hammonton.

Q. How long has she lived there?

A. I don't know the exact time.

Q. Did she ever live near you?

A. No, sir.

271 Q. You remember when a gentleman came here from Minnesota to see your grandmother about a land warrant?

A. No, sir; I only know that one came, I did not know anything about it, I never heard anything about it.

Q. Your sister says that shortly after he was here she talked with you about it, is that true?

A. She did not say anything about the land, she just said that they had been here, that was all.

Q. Who had been here?

A. That she did not tell me, only some man.

Q. For what did she say?

A. That, she did not tell me. She did not tell me the particulars, nothing only that they had been here with reference to some land, that was all.

Q. Where were you when she told you this?

A. In my own home.

Q. Did she say that she had been up to Philadelphia?

A. No, sir; she had been to my grandmother's I believe.

Q. She told you in substance, did she not, that some man had been here from the West, to see about the piece of land, that he claimed belonged to the heirs of George W. Remsen?

A. She told me something about it, but she didn't waste many words upon it.

Q. Did she say to you that it arose out of a land warrant, that your grandfather would have received being in the Mexican

272 war?

A. I don't think that she did, she had to go to make a certain train.

Q. This was shortly after the man had been here?

A. I think it was.
Q. Did you make any other inquiry?
A. I did not.
Q. You knew you were one of the heirs?
A. I supposed that I would be one.
Q. Did you take any pains to look it up?
A. I thought that we would hear of it again.
Q. That was in the fall, either December or January, 1889, was it not?
A. Now I cannot tell whether it was the fall or spring, but I judge it was the fall, I could not tell the month.
Q. It was a number of years ago?
A. No, sir; not a number of years ago.
Q. Tell us the time that the man was here from Saint Paul and seen your grandmother.
A. I think it was shortly afterwards, but I don't know how often.

Signature waived.
Adjourned.

Depositions of witnesses on behalf of the defendants in the above-entitled action, taken, pursuant to the notice and order hereto attached and returned herewith, before Ambrose Tighe, Esq., at his office, in the city of St. Paul, Minnesota, on the morning of Wednesday, the 31st day of May, 1893, *et seq.*

273 W. E. Bramhall, Esq., appeared on behalf of the complainants and Frank B. Kellogg, Esq., appeared on behalf of the defendants.

It is stipulated that the testimony of all witnesses produced before Ambrose Tighe, Esq., the examiner heretofore appointed to take their testimony herein, may be taken in shorthand by Clement B. Birch, a stenographer, and by him reduced to typewriting, the signatures of such witnesses to such depositions being hereby waived, and that such testimony shall have the same force and effect that the same would have if personally taken by said examiner.

CHARLES D. GILFILLAN, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. What is your name?
A. Charles D. Gilfillan.
Q. Where do you reside?
A. In Redwood county.
Q. When did you first come to St. Paul?
A. I came to St. Paul in the fall of 1854, but I came to Minnesota in April, 1851.
Q. You came to Minnesota in April, 1851?
A. Yes, sir; I first resided in Stillwater.
Q. You have lived in Minnesota ever since, have you?
A. Yes, sir.

274 Certified copy of deed from Nathan C. D. Taylor to Charles D. Gilfillan, dated April 28, 1854, marked Def'ts.' Ex. 7, and shown witness.

Q. This is a certified copy of a deed from Nathan C. D. Taylor to yourself, of the southwest quarter of section 28, the property in question herein. Was the original of that deed delivered to you by Nathan C. D. Taylor?

A. Yes.

Counsel for defendants offers Def'ts.' Ex. 7 in evidence.

It is stipulated that no objection is made to any deed or document certified to by the register of deeds on the ground that the same is not certified under the act of Congress.

Q. Did you buy that property, Mr. Gilfillan?

A. I did.

Q. At the date of that deed?

A. Yes.

Q. What did you pay Mr. Taylor for it?

A. I paid him $600.

Q. At the time you bought it did you have any knowledge of any claim by the Remsen heirs, or any one else, to this property?

A. No, sir; I supposed the title was perfect.

Mr. BRAMHALL: I suppose you mean by your question, Mr. Kellogg, any actual knowledge?

Mr. KELLOGG: Any actual knowledge; yes.

Q. Is Nathan C. D. Taylor still alive?

A. No, sir.

Q. Were you ever in the land office at Stillwater as a clerk?

275 A. Yes, sir.

Q. What year was that?

A. I was there in 1851, 1852 and 1853, more or less.

Complainants' Ex. 4, being the land warrant in question herein, shown witness.

Q. Do you know what the market value of land warrants known as the Mexican land warrants, like the one in question, was in 1848, 1849 and 1850?

A. Well, they would vary in price. They were worth about seventy cents an acre.

Q. That is, a land warrant for 160 acres would be worth here in St. Paul about $112?

A. Yes; not over that; not exceeding that.

Q. What were they worth in the market in Philadelphia and Eastern cities?

A. Well, there would be a difference of from five to ten dollars apiece.

Q. More or less?

A. Less; in the East.

Q. State whether they had a well-defined market value.

A. Yes; they had a market value, exactly the same as bonds and stocks have nowadays; they were quoted in the market.
Q. They were quoted in the market?
A. Yes, sir, and in the investment papers.
Q. Were they bought and sold to any great extent in those days?
A. Oh, yes.
Q. How were they usually passed?
276 A. Simply by a transfer; they were assigned in blank.
Q. And passed from hand to hand?
A. Yes, sir.
Q. Circulated?
A. Yes, sir.
Q. Do you know the land in question in this case?
A. I did know it; yes, sir.
Q. What was the land worth when you bought it in 1854?
A. It wasn't worth any more than what I paid for it; about $600.
Q. Were you familiar with the value of that land and similar land around it in 1850?
A. No, sir; I wasn't here in 1850.
Q. Well, 1851?
A. I began to get acquainted with the value of land in the summer of 1851.
Q. What was that land worth in 1851?
A. Well, I should suppose it was worth two or three dollars an acre; not over that.
Q. Not over two or three dollars an acre?
A. No.

Certified copy of bond from Nathan C. D. Taylor to Charles D. Gilfillan, dated April 28, 1854, marked Defendants' Exhibit 8, and shown witness.

Q. Prior to your taking the deed of this land did you take any bond for a deed?
A. Yes; it appears so by this; I had forgotten all about it, though.
Q. Defendants' Exhibit 8 is a copy of the bond, is it?
277 A. I think it is.

Counsel for defendants offers Defendants' Exhibit 8 in evidence.

Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Gilfillan, when you state that you had no knowledge of the claim of the Remsen heirs to this land at the time you took the deed therefor a copy of which has been introduced in evidence by counsel for the defendants and marked as their Exhibit 7, I suppose you mean that you had no knowledge that they made any claim to the land, that is, you had never heard, at the time you took your deed, that they claimed any interest in this land?
A. That is what I mean, yes; or anybody else.

Q. This deed which you took for this land you took for the benefit of Mr. McKenty, to whom you transferred it, did you not?
A. I bought it for him; yes, sir.
Q. And you immediately deeded it to him?
A. Well, a short time afterwards; I don't know exactly when.

Redirect examination.

By Mr. KELLOGG:

Certified copy of warranty deed from Charles D. Gilfillan to Henry McKenty, dated April 28, 1854, marked Defendants' Exhibit 9 and shown witness.

Q. Is that a copy of the deed that you gave Mr. McKenty?
A. I think it is; yes, sir.
Q. How much did Mr. McKenty pay you for that?
278 A. He gave me a hundred dollars for the transaction; that is what I got out of it; and I paid $600, so it cost McKenty $700.
Q. Paid in cash, was it?
A. He paid me $50 in cash and gave me a gold watch.
Q. I mean the $600?
A. $600 cash, yes; Mr. Taylor got that cash.

Counsel for defendants offers Defendants' Exhibit 9 in evidence.

Counsel for defendants also offers in evidence a certified copy of deed from Henry McKenty to Allen Pierse, dated May 22, 1854, being a deed of the property in question.

Marked Defendants' Exhibit 10.

It is admitted that John W. Tatum died subsequent to receiving a deed of this property, in 1860; that his estate was probated in Ramsey county, Minnesota, and that the property in question was, by final decree under the will, vested in John R. Tatum, Samuel C. Tatum and Hannah Tatum, one-third each, and that they have since conveyed the same to various parties, excepting a right of way conveyed to the Minnesota and Pacific Railroad Company by deed which has heretofore been introduced in evidence.

SIMEON P. FOLSOM, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

279 Q. When did you first come to St. Paul, Mr. Folsom?
A. On the 25th of July, 1847.
Q. Have you lived here ever since?
A. This has been my post-office address ever since.
Q. You have lived here most of the time since 1847?
A. Yes, most of the time; I have been absent some.
Q. Did you hear the testimony of Charles D. Gilfillan?
A. Yes.
Q. Are you familiar with land warrants like the one in question herein?
A. Yes, sir.

Q. What was the market value of land warrants of that kind in 1847 and up to 1850?

A. From 1847 to 1850 I think they averaged about $125 for a warrant of 160 acres.

Q. What were they worth in the Eastern cities, Baltimore, Philadelphia and New York?

A. They were reported about ten or twelve per cent. less.

Q. Did they have a well-defined market value?

A. Yes; they had a market value.

Q. Were these warrants generally circulated in the market by blank assignment?

A. Yes; blank assignment.

Q. What do you mean by that? An assignment in writing made on the back of the warrant?

A. Yes.

280 Q. With the name of the grantee left blank?

A. Yes, sir.

Q. That is the way it was usually done?

A. Yes.

Q. And they passed from hand to hand, current in the market, did they?

A. Yes.

Q. Do you know the real estate in question herein?

A. Yes.

Q. Were you familiar with its value from 1848 to 1850?

A. Yes. I lived close by it; I had a place within a half a mile of it; I had a farm.

Q. What was this land worth at the time it was located and patented, in 1848 and 1850?

A. Well, it wasn't worth more than the price of the land warrant; about a dollar and a half an acre; they could have bought it for that at private entry.

Q. Do you remember whether the Minnesota and Pacific Railroad Company, now the Great Northern, ever built its road across this land?

A. Yes, sir; it was graded across it in 1848—I mean 1858.

Q. When did it build its track?

A. It built its track in 1862, some time in June.

Q. I will ask you if that track of the Minnesota and Pacific, subsequently the St. Paul and Pacific, has been there ever since?

A. The track was put down some time in June, 1862; it

281 was used as a railroad track, and was the only one across any property in that neighborhood up to 1876.

Q. It has been used as a railroad track ever since, hasn't it?

A. It was sold to the transfer company; I don't know what they do with that track now.

Q. Well, it is there yet?

A. The track is there.

Q. When did this land commence to increase in value from this price that you give in 1848 and 1850?

A. Directly after 1849 and 1850 property increased in value considerably; outside lands had increased in value considerably.

Q. Until what time?

A. Until 1857, they constantly increased in value; gradually increased.

Q. Then how was it for a number of years?

A. Dead as a door nail; no sale for anything; you could hardly mortgage it for enough to pay the taxes.

Q. Then how many years did it remain like that?

A. There was a little revival after 1870, and then there was a fearful panic in 1873, and everything was at a standstill; the next year it began to go up again, and went on until we had the biggest boom the world ever heard of.

Q. When was that?

A. That ended four or five years ago.

Q. For ten years after 1857 there was no sale for such property at all, was there?

A. Very little; very little sale.

282 Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Folsom, the depression which occurred in property in St. Paul, beginning in 1887, has continued, to a greater or less extent, down to the present time, hasn't it?

A. I don't think it is a great deal better now.

Q. There has been very little sale of real estate here since 1887, hasn't there?

A. Well, I don't know, only what I have seen in the newspapers. I see a few city transfers; I don't see many outside transfers; I doubt if there has been much sale.

Q. By outside transfers you mean transfers that would include this class of property?

A. Yes; this class of property.

JOHN B. SANBORN, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. How long have you lived in St. Paul, General?

A. It will be thirty-nine years next December.

Q. That would make it since 1854?

A. Since 1854.

Q. Do you know the property in question herein?

A. I have a general knowledge of it.

283 Q. This 160 acres?

A. Yes.

Q. State how the property increased in value from 1854 down to the present time, generally.

A. Well, in 1854 there was a good market price for land in that vicinity, and that continued down to August and September, 1857;

then there was no market until 1868 or 1869; then for four years it would sell for what it was worth—in 1872 and 1873 for more than it was worth; then there was another crash, and there was no market value for the land until about 1879 or 1880; then it commenced to rise, and the rise was immense; the market value became very great in 1887—I should imagine as high as twenty-five hundred or three thousand dollars an acre; and from that time on there has been a depression in real estate that has been constant and continuous; I am inclined to think that the decline in market values, has been constant from that time to the present.

Q. For ten years after 1837 was there any sale for real property?

A. There was no sale at all; it could be applied, to some extent, in payment of debts, when a creditor could get nothing else.

Q. I suppose its intrinsic, real value has increased gradually all these years?

A. It has gone along gradually all the time.

Cross-examination.

By Mr. BRAMHALL:

Q. General, this property is situated about how far from the St. Paul post-office?

284 A. It is about four miles from the post-office of St. Paul; from three and a half to four miles.

Q. Isn't it a little further than that?

A. I am speaking from my recollection; I believe there are eight or nine sections between this city and old St. Anthony, and this land was about midway.

Q. What value did this property reach in 1857?

A. In 1857 this property reached a valuation of from fifty to a hundred dollars an acre.

Q. Fifty to a hundred dollars an acre?

A. Yes.

Q. Then, in 1857, it dropped, and you say there commenced to be a sale for it again in 1868 and up to 1873. What was the value of this class of property in that time?

A. From one to two hundred dollars an acre.

Q. Both the value which it reached in 1857 and from 1868 to 1873 was a speculative value, more or less, wasn't it? There were no improvements out there, and you couldn't use the land for any purpose that would bring in that much income from it, could you?

A. Yes; the market value was speculative.

Q. The country wasn't filled up anywhere around there, was it, at that time?

A. In 1857 the nearest buildings (that is, any number of them) were about a little lake, which has now disappeared; there were six or eight houses, and they were within about two miles; between 1857 and 1867 they were all abandoned, and brought in to town.

285 Q. Then there were no houses any nearer than these six or seven, in 1857, to this property?

A. Nothing nearer.

Q. From 1868 to 1873 it wasn't built up to amount to anything, was it?

A. No.

Q. The improvements which have been made in that vicinity have been made since 1885, mostly?

A. Yes; I forget the year they built at Macalester. There was no village population—not even a suburban city population—until the time you speak of in your question.

D. M. SULLIVAN, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. What is your name?

A. D. M. Sullivan.

Q. What is your business?

A. I am superintendent of the Minnesota Transfer Railway Company.

Q. One of the defendants in this case?

A. Yes, sir.

Q. How long have you been such superintendent of the Minnesota Transfer Railway Company?

A. Since February, 1883.

Q. When was the transfer established? I mean by that, when did they buy the property and commence to improve it?

286 A. I think it was in 1881 that they commenced; 1880 and 1881, I think. I think they commenced grading in 1880.

Counsel for defendants offers in evidence certified copy of a deed from Samuel C. Tatum, *et al.* to the St. Paul, Minneapolis and Manitoba Railway Company conveying the westerly sixty acres of the property in question herein, dated May 18, 1880.

Marked Defendants' Exhibit "11," and shown witness.

Q. Is that a deed of what is known as the transfer property?

A. Yes, sir.

It is admitted that this westerly sixty acres, by various and sundry mesne conveyances from the heirs of John W. Tatum, was conveyed to the defendant, The Minnesota Transfer Railway Company, and that said company acquired its title within a year from the date of Defendants' Exhibit "11."

Q. What improvements have the Minnesota Transfer Railway Company upon this westerly sixty acres?

A. Its value, or the character of the improvements?

Q. What is the nature of the improvements?

A. Tracks, warehouses, stock yards, derricks, platforms, scales—everything of that kind.

Map of the Minnesota transfer marked Defendants' Exhibit "12" and shown witness.

Q. State whether this is a correct map and shows the location of this property and the tracks and buildings upon the property.

A. Yes; it does.

287 Q. Is the property within the four corners marked with red ink N. W. cor. N. E. cor. S. W. cor. and S. E. cor. on this map the sixty acres that belongs to the Minnesota Transfer Railway Company?

A. Yes, sir.

Q. State when the transfer company put these improvements upon this property.

A. I think that most of these track improvements were put on as early as 1881 and 1882—a great deal of them; and since then, at various times, several additions were made. A great part of the improvements were put on in 1881 and 1882, and from that on, almost every year.

Q. I see on this map a long building, marked freight-house.

A. Yes, sir.

Q. State whether a part of that freight-house is upon this property.

A. Yes; the line runs through the freight-house, you will observe.

Q. Right east of the freight-house are some lines and check-marks, indicating enclosures; what are those?

A. Stock yards.

Q. The property which is known as the stock yards is that property which I have just marked stock yards in red ink, is it not?

A. Yes.

Q. What other buildings, if any, are there on the transfer company's property?

A. You are speaking of the sixty acres?

Q. Yes.

A. Nothing but what I have mentioned; warehouses, stock
288 yards, tracks, scales, platforms, derricks, and all the appurtenances.

Q. What was the value of the improvements placed upon this sixty acres at the time of the bringing of this suit, in the summer of 1892?

A. About $231,000, or a little over.

Q. And you think that more than half of the value of these improvements was placed on the property along in 1882 and the balance from that time on to the present?

A. Well, I couldn't say positively.

Q. Well, about what proportion, do you think?

A. Very nearly that, I think; that is, in the way of tracks; I wouldn't be positive about that, though. The warehouse was built in 1881 or 1882.

Q. The warehouse was built when?

A. In 1882.

Q. When were the stock yards built?

A. They were built since then.

Q. At the time these improvements were placed on this property

did you, as an officer of that company, have any knowledge of any adverse claim to the property, or any claim whatever, by the heirs of George W. Remsen, these complainants?

A. No, sir.

Q. When did you first hear of any such claim?

A. I think some time last summer.

Q. At the time this suit was brought?

A. Yes.

Q. As far as you know did the company have any such notice?

A. I never heard of any.

289 Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Sullivan, when you say you had no knowledge of the claim of the Remsen heirs to any interest in this property and that the officials of the transfer company, so far as you know, had no knowledge, I suppose you mean by that simply that you had not heard any one say that they had any claim to it?

A. To be sure.

Q. This $231,000 that you have given as the value of the improvements of the transfer company upon the sixty acres represents the first cost of the various improvements that the transfer company made on this property up to the time of the beginning of this suit, does it not?

A. Yes.

Mr. KELLOGG: In your opinion were the improvements worth that at the time you speak of—at the time of commencing this suit?

WITNESS: Yes, sir.

Mr. KELLOGG: Have you added the items of expense in keeping them up from year to year?

WITNESS: No.

Q. Mr. Sullivan, some of these tracks that are represented on this map have been down and used for some time, haven't they?

A. Yes, sir.

Q. And this freight-house has been used for some time?

A. Yes, sir.

Q. And the stock yards, derricks, platforms, and so on?

290 A. Yes, sir. Of course, all the tracks that have been worn out have been replaced with new material.

Redirect examination.

By Mr. KELLOGG:

Q. The blue lines on this map indicate what? Are they tracks?

A. Yes, sir.

Q. They indicate tracks?

A. Yes.

Q. Does each line indicate a separate track?

A. Yes.

Counsel for defendants offers Defendants' Exhibit "12" in evidence.

Objected to for any other purpose than merely to show that improvements to a large value had been made upon this property by the transfer company previous to the bringing of this suit.

J. L. LOVERING, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. What is your name?
A. J. L. Lovering.
Q. And you live in the city of St. Paul?
A. Yes, sir.
Q. How long have you lived here?
A. Going on eleven years.
Q. Have you bought and sold real estate on the quarter section of land in question in this suit?
A. Yes, sir.
291 Q. You owned, at one time, part of that quarter section?
A. A portion of it; yes, sir.
Q. State whether you know the value of that quarter section of land at the present time, without the improvements on it, from 1885 down to the present time.

Mr. BRAMHALL: Do you mean the transfer property also?
Mr. KELLOGG: Yes; the whole thing.

A. I think I do.
Q. You think you do; and have known the values during that time?
A. Yes, sir.
Q. Do you remember when this suit was brought, about one year ago?
A. Yes, sir.
Q. What, in your opinion, at that time, was the entire quarter section worth, without the improvements?

Mr. BRAMHALL: What time does "at that time" refer to?
Mr. KELLOGG: The time the suit was brought.
Mr. BRAMHALL: That is objected to as not a proper basis of valuation.

Q. Please answer the question.
A. Well, I figured the thing up, and, from my experience and my sales, I estimate the value of the property, $1,177,500.

Mr. BRAMHALL: That is objected to on the ground that it
292 is not a proper basis on which to give valuation, and, for that reason, I move that the answer be stricken out.

Q. You have bought and sold property on this section and in that vicinity during these years?
A. Yes, sir.

Q. Is the property worth that at the present time?
A. I think it is.
Q. State whether the property increased in value from 1886 and 1887 down to the time of the bringing of this suit.
A. I think it did.
Q. From December, 1889, to the time of bringing this suit, which was about June, 1892, state whether this property increased in value.
A. I think it did.
Q. Then, has the property decreased or stood still in value during any time from 1887 down to the present time, in your opinion?
A. No; I think it has increased.

Page 16 of volume 2 of Donnelly's Atlas of St. Paul, being a map of the property in question herein, was then marked Defendants' Exhibit 13 and shown witness.

Q. Did you ever own the property marked on this plat, Exhibit 13, as Lovering's factory, warehouse and transfer property?
A. I did, sir.
Q. The entire strip?
A. Not the entire strip; I owned blocks 1, 2 and 3.
293 Q. I notice that lot 21, block 2, is marked in yellow. What does that indicate?
A. Well, I don't know about that. That is a house that has been put there since I sold the lot. It is a small lot, facing east.
Q. It indicates a house?
A. It indicates a house.
Q. That marked red is what?
A. That is William H. Deering's warehouse.
Q. And the other lots and pieces of land marked in yellow indicate what?
A. Buildings.
Q. Do you know anything about those buildings yourself?
A. That indicated here by the yellow mark is property belonging to Mr. Shepard—a warehouse.
Q. And what are these immediately south of block 3, marked in yellow?
A. Those are wooden buildings—residences.
Q. Do you know the value of the improvements placed on all the property that you once owned there?
A. Yes, sir; I think I do.
Q. What is the value of the improvements on all the property that you owned there?
A. From five to seven thousand dollars.

Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Lovering, you are in the boot and shoe business, aren't you?
A. Yes.

294 Q. And, while engaged in that business, you have been speculating in property?

A. Some.

Q. And, while speculating in property, you acquired the title to blocks 1, 2 and 3, of Lovering's factory, warehouse and transfer property, being a portion of the property in question herein?

A. Yes.

Q. At the time of the bringing of this suit you owned a considerable portion of that property yet, did you not?

A. Yes, sir.

Q. Which property was for sale at that time?

A. Some of it was.

Q. Well, you were willing to sell the property you had at that time if you got your prices for it?

A. Yes.

Q. And you are willing to do so yet?

A. Yes.

Q. When you say this property is worth as much as and more than it was in 1885 and 1887, you mean intrinsically worth, do you not?

A. Wel', do I understand what you mean by intrinsically?

Q. Do you mean, when you say that this property is worth now as much as it was in 1885 and 1887, that it has a market value at the present time equal to what it had in 1887?

A. Yes, sir; to a man needing that kind of property.

Q. Is its market value as much now as it was in 1887?

295 Can you put it on the market and sell it for as much now as you could then?

A. I don't think there has ever been a time when the property could be put on the market and sold to the same advantage that it could be sold to a purchaser who wanted it. Those are the customers we always sold to.

Q. Well, that is true of every piece of property. But do you think, Mr Lovering, that this property has risen in value since 1887, when all the rest of the property in St. Paul has depreciated, according to the testimony given in this case?

A. For the purpose it is used for I think it has.

Q. Do you think that this is an exceptional piece of property?

A. There is nothing like it; no, sir.

Q. You think it is an exceptional property?

A. Yes.

Q. You think that Midway Heights, as residence property, is an exceptional piece of property, and that that property would naturally rise during the whole time that all the rest of the property in the city was depreciating?

A. I think it has steadily advanced.

Q. That is not an answer to my question.

The last preceding question was then repeated by the stenographer, as follows: "You think that Midway Heights, as residence property, is an exceptional piece of property, and that that property

would naturally rise during the whole time that all the rest of the property in the city was depreciating?"

296 A. I am not testifying that all the property in St. Paul is depreciating.

Q. Well, I will ask you if property in St. Paul, as a rule, will sell for as much now as it would sell for in 1887?

A. Some of it will.

Q. But you know that, as a rule, property in St. Paul has depreciated in value?

A. Some of it has.

Q. I am asking you as to the rule. Now you understand these questions; answer them, please.

A. I think that may be so, but there are many exceptions.

Q. That is very true; but I ask you for the rule. As a rule you think that is so, do you not?

A. With exceptions, that may be so.

Q. Well, then, it is the rule, isn't it, and it has exceptions? Now, is this Midway Heights good for anything except residences at the present time? Is it used for anything except residences?

A. Yes; there are some warehouses.

Q. In Midway Heights?

A. No, not in Midway Heights; across the street.

Q. The property in Midway Heights, so far as it has been improved at all, has been improved purely for residence purposes, hasn't it?

A. There are some stores there.

Q. Well, there are such little stores as would naturally be required to supply the necessities of a residence district—grocery stores, butcher shops, and stores of that kind?

A. Yes, sir.

297 Q. In the neighborhood of this Minnesota Transfer property there is a great deal of other property that can be used for residences, is there not?

A. Not so extensively as it is used there.

Q. Well, isn't there a good deal of other property?

A. There is other property adjoining it, but this is the best residence portion of anything in the immediate vicinity.

Q. But there is other property around this Minnesota Transfer property that can be used for residence purposes, is there not?

A. I don't think there is; a good deal of it is low ground.

Q. How far is Union Park from Midway Heights?

A. Well, it is quite a little distance.

Q. Isn't Union Park right across the street from Midway Heights?

A. I think not.

Q. Do you know that it is not?

A. Well, there is quite a distance between them, and lumber yards, and trackage, and sheep pens, and so forth. It is a third of a mile.

Q. It isn't one-third of a mile from Midway Heights to Union Park, is it?

A. Well, something like that.

Q. The property to the west of the Minnesota Transfer property, excepting a small strip that is used for railroad purposes, connected with the transfer, is practically vacant property also, is it not?

A. Some manufacturing.

Q. Well, I said that excepting this strip it is practically
298 vacant property through there, isn't that true? There may be an occasional building (I suppose there is), but it is practically vacant property, isn't it?

A. Well, if you include the park there, there is a good many residence houses.

Q. I say immediately west, and towards Minneapolis. Is St. Anthony Park immediately west of the transfer?

A. St. Anthony Park is west. Mr. Pratt's warehouse and property is immediately west.

Q. St. Anthony Park is not solidly built up, is it, Mr. Lovering?

A. Not solid, I think.

Q. Are there not more vacant lots in that portion of St. Anthony Park, immediately west of that property than there are occupied lots?

A. Well, there may be.

Q. Don't you know that it is so?

A. I could not testify to the exact facts, Mr. Bramhall; I shouldn't be surprised if there were.

Q. Mr. Lovering, when you speak of the value of this property without any improvements on it, what value did you put upon Midway Heights lots, on an average?

A. I valued it by the acre.

Q. What valuation per acre did you put on it?

A. I valued it, as a whole, at $5,000 an acre.

Q. How much of a valuation did you put on Midway Heights property?

A. $325,000.

Q. How much does that come to, an acre, on Midway Heights?

299 A. That would be $5,000 an acre. Sixty-five acres.

Q. You put a valuation of $5,000 an acre on Midway Heights property. Now, Mr. Lovering, supposing that this property owned by the Minnesota transfer had been entirely unoccupied—that there was not a track upon it—that it was not used for any purpose whatever—that it was a vacant piece of property—do you still think that Midway Heights would be worth $5,000 an acre?

A. Oh, I think that the location of the property, and the immediate surroundings, and the business around it, have helped to make the value that it sells for.

Q. That is not an answer to my question, Mr. Lovering. I ask you, if this Minnesota Transfer property were absolutely vacant, had nothing on it, whether you think the market value of Midway Heights property would be $5,000 an acre?

A. Well, wouldn't it have the same effect to take away the other buildings around it and improvements adjoining it?

Q. That is not my question, Mr. Lovering. I am not setting myself up as a real-estate expert, and you are. I ask you, specifically, if that piece of property were vacant, and there was not a thing on it, what you think would be the market value of the Midway Heights property, per acre?

A. Well, it would reduce the value of the property, the same as it would to take away the other improvements around it,
300 about it, and adjoining it—both Merriam Park, Union Park and all the other settlements and improvements in that vicinity.

Q. You think that if the property owned by the Minnesota Transfer Company were an absolutely vacant piece of property it would decrease your estimate of the value of the Midway Heights from $5,000 an acre—it would be less than that?

A. If there were no improvements anywhere around there, of course.

Q. Well on the Minnesota transfer alone, I am asking you—if that were absolutely vacant—if there were no railroad tracks or improvements upon that land whatever?

A. Well, that wouldn't affect the residence property.

Q. It would not?

A. Midway Heights would still be worth $5,000 an acre.

Q. Do you know where most of the people who have built houses upon Midway Heights work?

A. Well, I haven't talked with them all, but I understand that some work in the city and some are employed in the Midway district.

Q. Have you talked with any of them who live there as to where they work?

A. I know some who work in both places.

Q. Some are working for the Minnesota Transfer Company?

A. Yes, sir.

Q. Do you know how many?

A. No.

301 Q. You are interested, are you not, in having the value of this property out there maintained?

A. No more than any other property-owner.

Q. Well, you are interested, as a property-owner, in having values maintained?

A. I am, as a whole, all over the city.

Redirect examination.

By Mr. KELLOGG:

Q. How much property do you own out there yet?

A. I don't own nearly as much as I did.

Q. Do you know how much you own now in proportion to what you did own?

A. About one-sixth of what I did.

Q. Do you know the line known as the interurban line?

A. Yes, sir.

Q. That is the double-track electric road from here to Minneapolis?

A. Yes, sir.

Q. How far from this property does it run?

A. Oh, from a quarter to a third of a mile.

Q. About how far is Union Park from this property?

A. About the same distance.

Q. And Merriam Park?

A. Still further.

Q. How much further?

A. I don't know just how far; it is across Union Park. The map will show.

Q. How far is Hamline?

A. I think Hamline adjoins it on the east.

302 Q. This property, then, is situated right between the two cities, and in the district of the greatest improvement in the last five years, isn't it?

Mr. BRAMHALL: That is a leading question, but go ahead.

A. It is.

DAVID C. SHEPARD, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. Did Shepard, Winston & Co. ever own any property, and do they now, on the southwest quarter of section 28, on which there are certain warehouses—the block of land immediately north of block 3 of Lovering's property?

A. Yes, sir; two acres there.

Q. The two acres indicated on the map immediately north of block 3 of Lovering's factory, warehouse and transfer property?

A. Yes.

Q. When did you buy that, Mr. Shepard?

A. Well, I should have to refer to the deed to find out. It was six or seven years ago.

Q. What improvements have been made, including the improvements of Mr. Winston, and all, on those two acres of land?

A. Well, the improvements were substantially all made before the property was subdivided. Winston Bros. now own the north one-third, and the firm of Shepard, Sims & Co. own the south two-thirds. The improvements were substantially all made be-

303 fore the division. They have made a little; I don't know how much. We built a large warehouse, a rectangular building, about sixty feet wide, a car-repairing shop and two large barns, and we graded the entire property to a suitable grade for use in connection with the railroad.

Q. When were these improvements made, Mr. Shepard, as near as you can tell?

A. Well, the year we bought it; most of them were made that

summer. We bought it in the spring and most of them were made in the summer.

Mr. BRAMHALL: They were all made before June, 1892?

WITNESS: So far as I know—so far as we have any interest in it—they were. Winston Bros. may have done something.

Q. Just give us the total cost of the improvements.

A. The cost of the buildings and grading was $5,930.83. That is the cost charged on our books.

Q. How much of that was for grading?

A. I couldn't divide it here, but it could be done at our office. My recollection is that the cost of grading was about $2,000; somewhere about that sum; and we have expended on buildings since the division, $32.74.

Q. Were the buildings worth that, in your judgment?

A. Yes, sir; they were built economically—built for actual cash cost.

Q. And that includes all the buildings you have on the property?

304 A. That includes all the buildings that Winston Brothers and ourselves have. The grading applies to both, you understand, and is not separated on our books. To get the cost of the improvements you would have to add what Winston Brothers have done since we divided it. They have done considerable, to my knowledge. They have converted what were rough barns into storage houses and spent a good deal of money on them, I think.

Q. Do you know about how much?

A. I should have to guess.

Q. Give us an estimate.

A. I should say they have spent about $500. They can answer that better than I can.

Cross-examination.

By Mr. BRAMHALL:

Q. When did they make those improvements?

A. That was after the division.

Q. Before this suit was commenced?

A. Yes; before this suit was commenced; two or three years ago.

Redirect examination.

By Mr. KELLOGG:

Q. Before the commencement of this suit, did you or Shepard, Winston & Co., or the present company, so far as you know, ever have any knowledge of any claim by the Remsen heirs or anybody else, to the property?

A. No. We had our title examined by Mr. Ingersoll, the 305 attorney, and he passed it as perfect. We bought it relying upon his examination.

Recross-examination.

By Mr. BRAMHALL:

Q. When you say, Mr. Shepard, that you had no knowledge of the claim of the Remsen heirs, you mean that no one had informed you that the Remsen heirs claimed any interest in the property, do you not?

A. That is what I mean; or anybody else for that matter.

Q. You mean that no one informed you that the Remsen heirs claimed any interest?

A. I mean that no one informed me—they or any one else.

JAMES J. HILL, sworn as a witness on behalf of the defendants, testified as follows:

Q. Your name is James J. Hill?

A. Yes, sir.

Q. And you reside in St. Paul?

A. Yes, sir.

Q. And you are the president of the Great Northern railway?

A. Yes, sir.

Q. Do you know the westerly sixty acres of the southwest quarter of section 28, a part of the property in question herein, known as the Minnesota Transfer property?

A. Yes, sir; I do.

306 Q. Did you buy that property for the transfer company?

A. I bought it before the transfer company was organized, and with a view of organizing the transfer company.

Defendants' Exhibit 11, being a certified copy of the deed from the Tatum heirs to the St. Paul, Minneapolis and Manitoba Railway Company, shown witness.

Q. Is that a copy of the deed that you received for that property at the time you bought it, Mr. Hill, as far as you know?

A. As far as I know, that is a correct copy.

Q. Did you buy it at or about the date of that deed?

A. Yes, sir; about that time.

Q. What did you pay for the property?

A. The consideration is set forth in the deed; I think that is the correct consideration. Something less than $200 an acre.

Q. $11,540. At the time you bought this property, did you have any knowledge of any claim by the heirs of George W. Remsen, or any one else, to the property?

A. None whatever.

Q. Before the commencement of this suit did you ever have any knowledge of any adverse claim by any one to the property?

A. The first I ever heard of any adverse claim was when my attention was called to this suit.

Q. The property was afterwards deeded to the Minnesota Transfer Company, I believe.

307 A. Yes, sir. There were several pieces of property acquired, some in the name of the Manitoba Railway Company, some

in my name, as trustee, and some in the name of S. S. Merrill. They were all put together as the Minnesota transfer.

Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Hill, when you state that, previous to and at the time that your purchased this property, you had no notice of the claim of the Remsen heirs to this property, or that they had any interest in it, I suppose, of course, you mean that no one had ever informed you that these heirs made any claim to any interest in the property?

A. I mean that the title to all the property bought there—that among the other—was looked up, as is the custom, and it was certified that it was a good title. My attention was not called to any adverse claim, at all.

Q. What I was trying to get at, Mr. Hill, was simply this: You were not meaning to disclaim any constructive or record notice of this claim of the Remsen heirs, in case there was any such notice; you merely mean to disclaim any actual notice of the claim of these heirs?

A. I mean to say that I knew of no adverse claim against that property, on the part of any person.

Q. That you had no notice?

A. That nobody called my attention to it. On the contrary——

Q. You supposed you were getting a good title?

308 A. Yes, sir.

A recess was then taken until 2 o'clock, p. m.

Afternoon Session.

CHARLES H. PRATT, sworn as a witness on behalf of defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. Where do you reside?

A. Minneapolis.

Q. How long have you lived in Minneapolis?

A. Fourteen years.

Q. What is your business?

A. Real estate.

Q. State whether, during the last six or seven years, you have been familiar and acquainted with the value of the real estate in question in this case.

A. I have been for, say, since 1884.

Q. Since 1884?

A. Yes, sir.

Q. Have you bought and sold property in that vicinity?

A. I bought property, I think, in that year; either May or November of 1884.

Q. Have you been buying and selling property in that vicinity from that time until the present?

A. Yes.

Q. Have you bought and sold any of this quarter section in question herein?

A. No.

309 Q. Do you know what the value of that property was from 1886 down to June, 1892?

A. Yes; I think so.

Q. What, in your opinion, was the southwest quarter of section 28, in question in this suit, worth at the time of the bringing of this suit, which was about a year ago—somewhere, say, in June, 1892?

A. You mean the 160 acres?

Q. I mean the 160 acres; exclusive, of course, of the value of the tracks, buildings and improvements placed upon it.

A. Taken as an average?

Q. No, I want your estimate of the value of the whole property. I will ask you if you have estimated the whole thing?

A. Yes; I have looked the property over, in order to make up my mind as to its value.

Q. What, in your opinion, is the total value?

A. $1,177,500, placing the land at from $3,500 to $10,000 per acre.

Q. State whether the property has greatly increased in value since 1887.

A. Certainly.

Q. From December, 1889, until June, 1892, state whether, in your opinion, it has increased in value.

A. Yes, I think it has.

Q. You are not familiar with the value of the improvements, are you?

A. No.

Cross-examination.

By Mr. BRAMHALL:

310 Q. What is your business, Mr. Pratt?

A. Mostly the improvement and sale of real estate.

Q. You own, or have owned property, since 1884, right near this property, have you not?

A. Yes; property quite similar to it, in many respects.

Q. In what is known as St. Anthony Park?

A. Yes.

Q. You own a large part of that property yet?

A. Yes.

Q. It has been for sale during all this time that you have owned it?

A. Yes, sir.

Q. And is still for sale?

A. Yes.

Q. You are therefore, as the owner of that property, I suppose, interested in getting as much out of it as possible?

A. Certainly.

Q. Mr. Pratt, I saw you looking at a piece of paper during your direct examination, from which you took your valuation. Who prepared that paper?

A. The figures were given by me, though the writing is not mine.

Q. You have testified to the same value of this property as given by Mr. Lovering. With whom have you consulted as to that value?

A. Those values I gave to Mr. Fairchild a week or ten days ago.

Q. As your idea of the value?

311 A. As my idea of the value. This morning, of course, three or four of us have consulted together.

Q. Who were the three or four—Mr. Lovering, Mr. Fairchild and yourself?

A. Yes; I think simply Mr. Fairchild, Mr. Lovering and myself.

Q. Mr. Hazzard also?

A. Possibly Mr. Hazzard.

Q. And these figures are the result of your consultation?

A. Well, it is just as I say; they are my figures, as far as I know. Others think it is a fair valuation.

Q. But those figures were made up by you?

A. Yes.

Q. Mr. Pratt, the value of this property, excepting the westerly sixty acres of it, which belongs to the Minnesota transfer, is largely derived from the fact of the transfer being there and being such as it is, is it not? Does it not give value to that surrounding property?

A. Yes; that is a very large element.

Q. And especially to the property which is known as Lovering's factory, warehouse and transfer property and the corresponding strip along the side of it?

A. Very true.

Q. Now, at the time of making your estimate of the value of this property, a few days since, you of course fixed the value of that property without the improvements; that is, without taking into account the value of the houses upon the property, and the value of the trackage and the other improvements put upon it by the transfer company; but, in arriving at that value, you did

312 take into account the value which had been given to it by the improvements made by the transfer company, did you not?

A. That is very true.

Q. Supposing that no improvements had been mode by the Minnesota Transfer Company upon that property at all—that that was absolutely vacant, and that there were no houses built in this Midway district, no warehouses or other improvements made upon Lovering's factory, warehouse and transfer property—in fact, that there had been no improvements upon this 160 acres, but that it

had remained as one unimproved tract of land—what, then, would have been your idea of the value of it by reason of the improvements surrounding it upon other property?

A. The Minnesota transfer has been such an important element in the development of that neighborhood that I don't think a man could express an opinion about it.

Q. You think it would be almost impossible to do so?

A. It seems to me so. Of course, one might say that the land would then be worth what any other land would be worth in the Midway district.

Q. Well, what, in your judgment, would that be? You are very familiar with it. Corresponding property I mean, of course.

A. Considering its location as central and convenient, taking into account the railroad communications and the electric line, I think it would be worth $5,000 an acre. That would be allowing a thousand dollars for a lot 50 by 120.

313 Q. You think that all this property divided up into lots of 50 by 120, would have a market value of a thousand dollars a lot, irrespective of the Minnesota transfer?

A. Yes; I think that is fair.

Q. Mr. Pratt, you speak of this property having risen in value all the time since 1885 and 1887 to the present time. Now, has there been any market value for this property since the boom dropped out of these cities in 1887?

A. Yes; there has been enough of a demand in the Midway district not only to prevent prices from dropping, but, so far as people are able to hold their properties, to justify them in asking a larger figure. I can say that from my own experience. I want more for my property, year by year, on the ground that improvements are going in there—improvements which both cities are making.

Q. And are you able to get more?

A. Yes, and I have got it. I don't say that I have made frequent sales, or many sales. But, for example taking this business property: I have sold, we will say, twenty lots of my business property that corresponds with this trackage property—having trackage. I sold, first, a half interest at the rate of about $2,000 or $2,200 a lot; that is, perhaps, $9,000 an acre; then, later on, the other undivided half to the same party; it was a $15,000 sale. I dropped $5,000 on the second half. And, while it was a sale not exactly on the open market, still it was a sale that was made to a party who understood the value of the property and who has seen the property since and is entirely satisfied.

314 Q. Well, of course, we all understand that property has a certain intrinsic value, whether we are always able to get it or not.

A. Certainly.

Q. Although it is sometimes hard to determine what that value is. But your idea is that this property has an intrinsic value and that the falling out of the boom of the two cities, from 1887 down to the present time, has only affected the number of sales that could be made, but has not affected the price; that is, there have not

been as many purchasers for property, which has made it more difficult to dispose of it, but when you could dispose of it you could get as much as you ever could?

A. That is about it.

Q. Then it is rather exceptional as to this particular property, isn't it?

A. Yes, it is. The Midway property has withstood the troubles of the times better than any other property I know of.

Q. I will ask you whether you know that that has been true, generally, of the Midway property—that they have been able to get more and more for their property since 1887.

A. Well, I don't know; my impression is that, as far as Merriam Park is concerned, prices have been higher year by year; but I am not certain.

Q. But you will not swear that that is the general rule as to Midway property?

A. No.

315 Q. Your idea is that these Minnesota Transfer improvements have really added about a million dollars to the value of this 160 acres?

A. Half that; half a million.

Q. Do you think it has added as much as $300,000 to the value of the property?

A. Oh, yes.

Q. Don't you think that is rather a low estimate of the value that it has added to the property, Mr. Pratt?

A. Yes; I should say that it added more than that.

Q. Well, how much, in your judgment, has it added? Has it added half a million dollars to the value of that property out there?

A. I should be inclined to say that, whatever the present value may be, it ought to have made half of it. It ought certainly to double the value of that property.

Q. It ought to double the value of that property?

A. Yes.

Redirect examination.

By Mr. KELLOGG:

Q. The Midway Heights property itself is a very high, pretty piece of property, is it not?

A. Yes.

Q. Is it wooded?

A. Yes; I think so. It is a very pretty addition.

Q. Now, I ask you if its relative position to Hamline, St. Anthony Park, Merriam Park and other reasonably thickly settled parts of the city, does not also give it an enhanced value—a value greater

316 than a piece of property right out there in the country would have?

A. Yes; that is an element of value.

Q. Had you consulted with any one as to the value of this prop-

erty when you gave Mr. Fairchild the memorandum which you say you handed to him about a week ago?

A. No; those are the figures I gave him.

Q. He wrote you, did he not, and asked you to make an estimate?

A. Yes, and I went into his office and, without any previous figuring, I gave him those figures.

Recross-examination.

By Mr. BRAMHALL:

Q. Mr. Pratt, you own property in what is known as St. Anthony Part, directly west of this property, don't you—practically the other side of it?

A. Yes.

Objected to.

Q. How many acres of that property are there, Mr. Pratt, that you bought out there?

A. 425 acres.

Q. And how much did you give for that in 1884?

A. I think $185,000.

Q. That is of the same general character as this property in question, leaving out of consideration the improvements which the Minnesota transfer have made, isn't it?

A. Yes.

Q. In 1884 there was a very large movement in real estate
317 and increase in values throughout Minneapolis and St. Paul and the Interurban district, wasn't there?

A. Yes, sir.

By Mr. KELLOGG:

Q. The large movement was after 1884, wasn't it?

A. Yes; that is very true.

Q. And the large increase in values was after you bought that property?

A. I bought that before, in the market. Additional railroads, amongst them the Northern Pacific, came in subsequently; they took five acres out of my tract there, giving them the entrance to the transfer. Then, the enlarging of the Minnesota transfer was subsequent.

Q. And the large increase, as I understand you to say, was after you bought this?

A. Yes.

By Mr. BRAMHALL:

Q. The Northern Pacific, which you speak of as having been built through there after you bought this property, established a station upon your land, didn't it?

A. Yes, sir.

Q. That station isn't anywhere near the Midway Heights, is it?

A. It is 2,000 feet away.

Q. But there is no street or road directly from that station to the Midway Heights; that is, directly across, which could be used for the purpose of getting there?

A. No.

318 J. L. LOVERING, recalled as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. What was the value and cost of the grading done upon your property that you purchased in this quarter section?

A. I spent $11,000 in grading up block 1 to grade, and grading down four lots in block 2, and grading down all that portion of block 3 facing on the transfer, where Deering's warehouse is.

Q. Was it worth that sum?

A. I couldn't get it done any cheaper.

Cross-examination.

By Mr. BRAMHALL:

Q. Was this done before June, 1890?

A. Yes.

Q. Done after the transfer tracks were built?

A. Oh, yes.

Q. Done for the purpose of making this property available in connection with the transfer property?

A. Yes.

GEORGE H. HAZZARD, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. Mr. Hazzard, where do you reside?

A. In St. Paul.

319 Q. How long have you lived here?

A. I have lived in Minnesota since 1866; in St. Paul since 1872.

Q. What is your business?

A. I was in the railroad and transportation business for a long time. I have been in the real-estate business for the last ten or twelve years.

Q. During the last ten or twelve years have you dealt in and been familiar with the values of property in the Midway district?

A. I have resided there for nineteen years, and have a general knowledge.

Q. Do you know what the property in question in this suit was worth, and has been, since 1886?

A. Yes, sir; in a general way.

Q. Have you handled property in that vicinity?

A. I have never handled a great deal there, but, of course, I have had to be constantly familiar with it.

Q. Familiar with the prices that property brought?
A. Yes, sir.
Q. You are familiar with the location and surroundings of the quarter section in question?
A. Yes, sir.

Dual City map, marked Defendants' Exhibit 14 and shown witness.

Q. Please state what that is.
A. That is a map of the dual cities.
Q. A map of Minneapolis and St. Paul?
A. Yes, sir.

320 Q. State whether that correctly represents the position of the two cities in reference to this property?

A. That is drawn from scale and is as correct as small work like that can be. The map was copyrighted in 1889. The blue and red marks on the map were put on today. The map was printed in 1889.
Q. Any additions made since 1889 have not been engraved upon it?
A. No, sir.
Q. What does this red block of land in the center of the map, between the two cities, represent?
A. That indicates the Tatum track; this 160 acres.
Q. The property in question herein?
A. Yes, sir.
Q. That represents the southwest quarter of section 28?
A. Yes, sir. The red line is an air line between the union depots of the two cities.
Q. Now, I see, south of this property, a platted portion of property marked Merriam Park?
A. Yes, sir.
Q. State whether or not that is Merriam Park?
A. It is Merriam Park addition.
Q. And south of that, Macalester Park?
A. Yes, sir.
Q. And east of that red block, Hamline?
A. Yes, sir.
Q. And northwest of it, St. Anthony Park?
A. Yes, sir.

321 Q. Are those the true locations of all those various properties?

A. The map is geographically correct.
Q. I notice a blue line from the center of St. Paul to the center of Minneapolis, marked University avenue—Interurban line; what does that represent?
A. That line represents the electric or Interurban line—a street-car line running between the two cities.
Q. What do the irregular black lines represent?
A. The Milwaukee road, the St. Paul, Minneapolis & Manitoba, or Great Northern, and the St. Paul and Northern Pacific railways.

Q. On the westerly side of this 160 acres I notice some black lines; what do those represent?

A. Those are part of the transfer property, as shown by their big map this morning. These lines here (indicating) are side tracks to the State fair grounds.

Q. The various check-marks all over the property represent what?

A. Platted property in the two cities.

Mr. KELLOGG: I offer Defendants' Exhibit 14, in evidence, to show the location of this property.

Map marked Defendants' Exhibit 15 and shown witness.

Q. Mr. Hazzard, state what Exhibit 15 is.

A. This is a map of the city of St. Paul, as published in connection with the city engineer's report of 1891, from D. L. Curtice's map, by permission. All that I had done to that map was the putting on of the pale red there, to indicate where this property is.

322 Q. Does this map correctly represent the platted portion of St. Paul?

A. Yes, up to the time it was published; it was corrected to date. Down here are the references explaining it.

Q. I see on this map a portion colored light red. What is that?

A. I just had that done to indicate where this 160 acres was.

Q. That correctly shows the location of the property with reference to the other platted portions of St. Paul, does it?

A. Yes, sir.

Q. Also with reference to Union Park, Merriam Park, and the other surrounding parks there that are part of St. Paul?

A. Yes, sir.

Q. Are these maps made from actual measurement—the surveys, I mean?

A. Yes, sir. In my experience I find that all maps are more or less of what you might call an advertisement, but about as accurate as they can be made.

Q. What I mean is, they are made from actual survey plats?

A. From scales. Mr. Curtice, the county surveyor, prepared this map for the engraver.

Mr. KELLOGG: I offer Def'ts' Ex. 15, in evidence.

Q. What was the value of this quarter section, without improvements, at the time of bringing this suit, about a year ago? I mean not including the value of the improvements placed upon

323 the land, but with the environment and surroundings just as they are.

A. My valuation is very little lower than that of the other gentlemen who have testified. I have put it at $1,000,000, varying from them here and there a very little. Their valuation was something over $1,100,000, and mine is about $1,000,000.

Q. State whether this property has gradually increased in value since 1886.

A. The transfer property has gradually toned up. The Midway

Heights property firmed up from 1886 to 1888. The Midway Heights has felt somewhat the stringency of money and lack of confidence and what we call depression; but the intrinsic value is more; that is to say, there are more improvements. The Hamline school, just east of that, has increased its enrollment 100 during the last two years.

Q. Do you mean that the population around there has increased?

A. Yes, sir. It is a city school, and the pupils come mostly from that section.

Q. What kind of property is the Midway Heights property? State whether or not it is high property.

A. It is a very handsome piece of property; but, of course, property there doesn't reach, nor will it reach that fancy price for residence property that it would if it were not adjacent to the transfer.

Q. In other words, the Midway Heights property would be more valuable if the transfer were not there?

A. In my judgment it would have been developed into
324 fancy property and would have been worth more; it couldn't have been kept back. As it is, it throws it into moderate homes, and things of that kind.

Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Hazzard, how long did you state you had resided in Hamline?

A. I have resided just north of Hamline and at Hamline for the past nineteen or twenty years. I used to be town clerk of this section, and county commissioner.

Q. And during the last ten or twelve years you have been a real-estate agent and operator?

A. Yes, sir; I have owned some, but have sold on commission principally.

Q. And the property of which you have made a specialty during this time has been this Midway property, has it not?

A. No, sir; what I have made a specialty of is——

Q. Perhaps you misunderstood my question. I did not mean Midway Heights.

A. No, I understand. North central property I have probably made a specialty of; but I have also had a good deal of side-track property, in selling which I have come in competition with Midway Heights.

Q. Well, in your operations, for yourself and for others, you have been largely interested in property lying outside of the thickly settled portion of the city?

A. No, sir; that is, nothing further out than Elevator B, and Foundry addition.

325 Q. Have you not been acting largely for the sale of Hamline property?

A. No, sir; I was owner of some lots there, but I never sold very much property there for commission.

Q. Do you own some lots there still?

A. Yes, sir.

Q. You have been one of those who have taken an active interest in the development of Hamline, have you not?

A. Well, I have tried to do my share as a citizen.

Q. And you have also tried to do your share as one of the real-estate men of this city in trying to maintain the prices of property and making sales for others at as good figures as possible?

A. Well, it is hard to answer that question directly.

Q. Answer it in your own way, Mr. Hazzard.

A. Well, for instance, as regards maintaining prices, no; and in regard to maintaining prices in certain sections or certain places, yes.

Q. Well, is that true in regard to Hamline? Have you tried to maintain prices there?

A. Yes, sir; I have thought that Hamline rated low for its advantages.

Q. And it is always an advantage to a real-estate man to get as high a price for any piece of property that is left with him for sale as possible, isn't it?

A. No, sir. We have to get the last man out as well as put him in.

Q. Then in making these deals, you have an eye to the future as well as to the present?

326 A. Yes, sir. We are greatly misrepresented. We are called boomers, when, really, I think, we are the conservative men of the city.

Q. Now, Mr. Hazzard, upon this Ex. 14 which was introduced in evidence here a short time ago, I see a great many streets, and so forth, indicating that practically all the property in St. Paul and Minneapolis was platted previous to the time of making this map in 1889. There hasn't been much platted since, has there?

A. Not a great deal of property platted since 1889; no, sir.

Q. A good deal of this property that has been platted in these two cities has never really been improved, so to speak—it has been merely platted on paper, has it not—outlying property, a good deal of it?

A. Well, within a radius of two or three miles I think the additions have a good representation on this map.

Q. Well, outside of that a good deal of property outside the city limits of these two cities has been merely platted on paper—that is all it has amounted to—it is really unoccupied property?

A. Do you mean in general?

Q. Yes; lying away out in these suburbs.

A. Well, I don't class that as suburb; that is interurban property.

Q. Well, I say that a good deal of property which we see platted on this map, lying out on the city limits of these two cities,

327 is property that has only been platted on maps; the ground is really in an unimproved condition yet, *it is* not?

A. It is so in a general way; but there are great improvements in Midway Heights.

Q. I will come to Midway Heights in a minute. Now, we see marked on this plat, also, and to which your attention was called Macalester Park, Merriam Park and St. Anthony Park. In each of those parks, of course, there have been a large number of houses built, haven't there?

A. In Macalester there are a goodly number of good improvements—quite a marked public improvement. Merriam Park has a very large number of improvements and has a high grade of houses, built by people from both cities. Hamline, Union Park, St. Anthony Park and the syndicate additions have reaped quite a harvest of good houses—away beyond the times.

Q. Well, now, while all that is true, isn't it true that a majority of the lots in each of these additions are still unoccupied? And in answering that question I want you to remember what is Merriam Park and what is a part of Merriam Park—the addition which has been made to it and which has not been built up since.

A. Merriam Park proper is very largely occupied. The additions to Merriam Park, south, have a good representation of graded streets and sewers.

Q. I know; but isn't it true that all these additions to Merriam Park are indicated on this map as a part of Merriam Park?

328 I ask you if it is not true, in regard to all these additions, that the majority of the lots are still unoccupied?

A. Not of all the additions.

Q. Tell me what additions it is not true of.

A. If you will turn to this big map you will see the additions indicated. What is marked there as Merriam Park has a goodly representation of improvements. Macalester Park has a goodly representation.

Q. I know; but what I want to know is if it is not true, in regard to all these parks—Merriam Park, Hamline, St. Anthony Park and Union Park—considering the additions which have been made to Merriam Park upon the south and which are all indicated on Exhibit 14 as a part of Merriam Park, that a majority of the lots in each of those additions are unoccupied by houses?

A. It might be called a small majority.

Q. Is it not true as far as Hamline is concerned? What proportion of the lots in Hamline, in your judgment, are occupied by houses at the present time, or by improvements of any character?

A. Well, when the owner of a house has three or four lots do you call those lots occupied?

Q. Yes; but, of course, not in the case of a farm-house.

A. Well, west of Snelling avenue it is pretty well occupied. They run Hamline east of Snelling avenue as far as Lexington. Of course, it is only partially settled along there.

329 Q. Well, taking all that into consideration, what proportion of all the lots in Hamline—the addition known as Hamline—is occupied by improvements?

A. In the addition known as Hamline I should think there are at least 50 per cent. of the lots occupied.

Q. That is substantially true in regard to St. Anthony Park and Union Park, isn't it?

A. I should think it was, and of Merriam Park proper.

Q. Mr. Hazzard, don't you know that, within the last few years, St. Anthony Park lots have been offered at five or six hundred dollars apiece and gone begging?

A. Up on the hill there, yes, sir.

Q. Now, why are Midway Heights lots intrinsically worth more than St. Anthony Park lots? The latter lie just as prettily, don't they?

A. Well, you can walk from Midway Heights to the Interurban line and go to either city for five cents; and you can walk to the Hamline line.

Q. Well, in the lower portion of St. Anthony Park you are nearer to the Interurban line than you are in Midway Heights?

A. Well, I haven't heard of any $500 lots going begging.

Q. What have they been bringing, generally?

A. Well, for instance, the Methodist church paid $1,800 for a lot inside of the last two years.

Q. But what have lots generally brought there inside the last two years?

A. I should judge not less than from $850 to $1,250.

330 Q. What size are those lots?

A. 40 or 50 by 125. There are five to the acre.

It is stipulated that the plats of St. Anthony Park, Union Park, Hamline, Merriam Park, and the additions thereto, contained in volume 2 of Donnelly's Atlas of St. Paul, show substantially the condition of the country surrounding the property in question herein, so far as improvements are concerned, at the time this suit was brought, and may be considered in evidence and used accordingly.

Q. Mr. Hazzard, if I understood you correctly, you said, in your direct examination, that the occupying of this 60 acres by the Minnesota transfer has really depreciated the value of this property?

A. No, sir; I think that it has enhanced the value of property there that is used and adapted for business purposes; but I think that Midway Heights property would have taken a higher value for fancy residence property than it now has if the transfer were not there.

Q. Well, when you get right down to it, is there any real fancy residence property between these two cities? Have we anything that you could call fancy residence property—that is, property used for fancy residence purposes—between these two cities, in what is known as the Interurban district?

A. We have property there that has sold for about $50 a front foot; that would be from $2,000 to $2,500 a lot.

331 Q. Well, that is property that is used by people of moderate means for a moderate class of houses, and a good class of

houses; but, still, it is not what you would call fancy residence property, is it?

A. No, sir; they are houses costing from $4,500 to $8,000.

Q. Your idea, then, is that Midway Heights, if this transfer property were not there, might have been used for the same class of residences that there are in Union Park and Merriam Park?

A. Yes, sir.

J. B. ROSSMAN, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. Where do you reside, Mr. Rossman?

A. Hamline.

Q. What is your business?

A. I am a real-estate man, and a contractor and builder.

Q. How long have you lived in Hamline?

A. I have lived there since 1882.

Q. How long have you lived in St. Paul?

A. Since 1880.

Q. Have you bought and sold property in the vicinity of the property in question in this suit?

A. I have, sir.

Q. For how many years?

A. Well, I think that property was platted in 1884 or 1885; I bought some of the first that was platted.

332 Q. Have you, during all the years from that time to the present, bought and sold more or less property in this property in question and in the vicinity?

A. I have.

Q. Do you know what that property is worth and has been worth since that time?

A. I do, so far as anybody does.

Q. What, in your opinion, was the quarter section worth at the time of bringing this suit?

A. I put the value at $1,165,500.

Q. Does that include any of the improvements on the property?

A. No, sir.

Q. What improvements are there upon the Midway Heights property, Lovering's factory, warehouse and transfer property, and all of the other property exclusive of that of the transfer company? Just state generally.

A. Well, you had an estimate from Mr. Lovering of the value of the Lovering property; I should judge that that is very nearly correct—somewhere between five and six thousand dollars.

Q. Does that include any grading?

A. No, sir.

Q. It includes the buildings?

A. Yes, sir; there are only a few buildings; there are only the two buildings, I think, besides the small buildings there.

Q. Does that include the Deering warehouse?

333 A. Yes; the Deering warehouse and the Shepard ware house; they are two large warehouses. Of course there are some small buildings.

Q. Have you built any of the houses upon this property?

A. Yes, sir.

Q. How many?

A. Well, I don't know; twelve or fifteen, I should judge.

Q. You are a carpenter and builder?

A. I am.

Q. A contractor?

A. Yes, sir.

Q. Do you know the nature of the houses on this property?

A. I do.

Q. What were all the buildings on this property worth at the time this suit was brought, exclusive of any buildings on the transfer property?

A. Well, all I can give is an estimate. There are about seventy houses, as near as I can get at it by counting them on the map, and I should think they would average from $1,400 to $1,500 apiece, which would make somewhere in the neighborhood of $100,000 improvements.

Q. That does not include the transfer property, or any grading?

A. No.

Q. I will ask you if they have any sewers or city water mains out there?

A. They have both sewers and city water on the south side of Midway Heights.

Q. That is, on Minnehaha street?

334 A. Yes; and I think they are now working on Chelton street.

Q. You don't know what the grading, sewers, and such other work as that, probably cost?

A. No.

Cross-examination.

By Mr. BRAMHALL:

Q. Wasn't that property platted in 1885?

A. Yes; I said either 1884 or 1885.

Q. And you think you bought your lots out there in 1885, the same year the property was platted?

A. Yes, sir.

Q. How many lots did you buy?

A. That is a pretty hard question for me to answer. I never had a deed of more than eight or ten; but I bought a great many lots of Mr. Tatum also, and sold them, and so they were not transferred to me direct. I suppose I sold fifty or seventy-five lots.

Q. How much apiece did you give for them?

A. I paid $500, when the property was platted.

Q. When did you sell the other lots?

A. Oh, I sold them within the next two or three years; not all of them, of course.

Q. When did you get rid of the last of them?

A. I sold one lot just before you began this suit, and I had to take it back on account of the suit.

Q. What did you receive for that lot?

A. I sold the house and lot for $2,800.

Q. How much of that sum did you consider was for the lot?

335 A. I considered about eight or nine hundred dollars was for the lot.

Q. Do you remember which lot that was?

A. That was lot 18, block 6; right up on top of the hill.

Q. And is $800 about as low a sum as you have received for any of those lots?

A. Oh, no; I sold as high as a thousand and fourteen hundred dollars, in Midway Heights, but they were corner lots, of course, and more valuable lots.

Q. Well, was this about as much as you had received for lots of about the same value as this lot?

A. Eight hundred to a thousand dollars was what we sold them *from.*

Q. What did you sell them for when you first commenced selling?

A. $550 and $600. Of course, you must understand that we bought them for $500 when it was first platted.

Q. And as soon as you could make any profit you turned them over?

A. Why, I sold lots at $50 of an advance, of course.

Q. But you sold the last for $800 just before this suit was commenced?

A. Yes; you asked me what I calculated for the lot, and that is about it.

Q. How long before that had you sold any lots for $800 that was worth about the same as this?

A. Well, I think I sold lots there the summer before for about eight or nine hundred dollars.

336 Q. The summer before?

A. Yes.

Q. Then these lots were of about the same value in 1891 and 1892, were they?

A. I considered them about the same.

Q. And is that also true as to 1890?

A. I have never sold any lots for less than $750 or $800.

Q. Well, they were practically of the same value for three or four years.

A. Yes. Of course, I considered that some of the lots in Midway Heights were much more valuable than others.

Q. Well, that was true even before that?

A. Yes.

Q. But from 1887 or 1888 to June, 1892, the property was of just

about the same value all the time, bringing just about the same, was it not? When you found a customer you would get about the same price all those years?

A. Well, not my property; mine was going up all the time.

Q. The way you got more for your property was by building on it and selling it for the improvements, wasn't it; that is, the last lots you had? The first property you sold you sold outright, without any buildings, and latterly you commenced to build and improve and sell the lots with the improvements?

A. Not entirely. I sold just about as many lots with the improvements as without, I think. The last year before the suit was begun I built four or five houses and sold them.

337 Q. You still own some property in that district, I suppose?

A. I think I have one lot left.

Q. I don't mean in the Midway Heights particularly.

A. Oh; yes; I have lots still.

Q. In putting this value upon the property which you have, Mr. Rossman, I suppose, of course, that although you have left out the value of the improvements you are taking into consideration, in making your estimate, the enhanced value of the property which these improvements have given it, of course?

A. Well, that is a hard question to answer. I put the value at what I considered they were worth when I made the estimate. Midway Heights property is worth less than it would have been without the Minnesota transfer.

Q. You are taking what you consider the value of the land at the present time, with all the improvements upon it, less the value of the improvements?

A. Certainly.

Mr. KELLOGG: Do you consider that property has increased gradually since 1887 to the present time?

WITNESS: Yes, sir; in Midway Heights.

H. S. FAIRCHILD, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. Mr. Fairchild, where do you reside?

338 A. St. Paul.

Q. How long have you lived here?

A. It will be thirty-six years next July.

Q. What is your business?

A. Real estate.

Q. How long have you been in that business?

A. All the time. I have done a little other business in connection with it.

Q. How many years have you been connected with the sale of property in the Midway district?

A. Oh, since there was a settlement there. I platted Midway Heights for Mr. Tatum.

Q. For the Tatums?

A. Yes, sir.

Q. Were you the agent of the Tatums?

A. Yes, sir.

Q. State whether you sold all of the property in the southwest quarter, exclusive of the transfer property, which has been sold.

A. I sold all of it; all the strip north, and all the strip west known as the warehouse property, and all of the lots in Midway Heights excepting twenty-four which I believe we have left.

Q. Did you also sell the strip that was sold above that and which passed into Mr. May's hands?

A. Yes.

Q. Then you sold all of the property, outside of what is known as the transfer sixty acres, excepting twenty-four lots which you still have or which the Tatum estate still own?

A. Yes, sir.

Q. Have you dealt in other Midway property?

339 A. Yes, sir. I sold all of Quinby Park and nearly all of Howard Park, besides considerable other property.

Q. Then you know what the value of property is in the Midway district, including this property, and what it has been since 1885?

A. I think so.

Q. What in your opinion, was the value of the *value of the* southwest quarter of section 28—this Tatum tract—exclusive of the improvements thereon at the time of the bringing of this suit?

A. The total sums up, without improvements, at $1,129,000.

Q. State how much per acre you allowed for that property, naming the different portions.

A. I allowed for Midway Heights, sixty-five acres at the rate of $4,200 per acre; that is, the parks—there are three little parks. If those parks had been subdivided into lots, six lots to the acre, at $700 a lot, $4,200 per acre, that would make $273,000. The tract shown as a white strip on Exhibit "13," right north of Midway Heights, I put at $3,000 an acre. Then I estimated the warehouse property—that is, that strip lying between Prior avenue and the transfer, embracing about twenty acres, as follows: It is 2,640 feet in length, about half a mile; the 2,640 feet fronting on Prior avenue I put at $20 a front foot, and the 2,640 feet fronting on the transfer I put at $60 a front foot which would make an average of $40, the total being a little over $211,000.

Q. For the entire twenty acres between Prior avenue and the transfer company?

340 A. Yes, sir. Then, when it came to the transfer property, I had a great deal of difficulty in fixing, in my own mind, a satisfactory idea of the value; but, after talking with the gentlemen who have already testified on that point, who knew much more about its value than I did myself, I became satisfied that they were about right, and I put it at the same figure that Mr. Pratt did, $10,000 an acre.

Q. That is, exclusive of the improvements?

A. Yes, sir.

Q. At the time this suit was brought?

A. Yes.

Q. Do you think that the property was worth that?

A. Yes, sir.

Q. And you would make the total $1,129,000?

A. Yes, sir; exclusive of improvements. And then, to go on and complete the matter, I figured on sixty-five houses. Mr. Rossman said he counted seventy. And Mr. Tatum and I had built seven, and I knew the cost of quite a number of the others, so I estimated them at $1,500, which would make, substantially, $100,000. Then, besides, there are warehouses and other buildings, barns, etc., so I suppose the total is somewhere between $100,000 and $110,000.

Q. That does not include the grading or street improvements?

A. No, sir.

Q. Have you any idea what the cost of the grading and street improvements would have been?

A. No, sir.

341 Q. At the time this suit was brought what streets were graded?

A. Minnehaha on the south, Fairview part of the way, though not very far, I think; Tatum avenue from Minnehaha to Chelton, and a little beyond Chelton, up to the rise; they did that in order to get the fillings for some of the other ground. I am not certain whether Chelton was finished.

Q. Are those the only streets that were graded?

A. Those are the only ones.

Q. Now, are the other streets open?

A. Yes, sir.

Q. Are they so that you can pass through them?

A. Yes. There is some landscape work there. You will notice here a little depression, where the streets run in a curved line, and then the rise comes here (indicating), so that you can drive over any of them very easily. I had the trees cut out of all the streets.

Q. Do you know what that improvement cost?

A. No; not a great deal.

Q. Mr. Fairchild, were warranty deeds given for all this property

A. Yes, sir.

Q. Did you have any knowledge, before this suit was brought, of any adverse claim by the heirs of George W. Remsen, or any one else?

A. Yes; I don't know how long before, but about three or four weeks prior, I think, Mr. Benedict told me that Mr. Bramhall was about to bring a suit. It was only announced a few weeks in advance of the suit.

342 Q. Is that the first notice you ever had?

A. Yes, sir.

Q. So far as you know, did all of these grantees purchase without any other knowledge that you had?

A. The title was examined by various attorneys, and they were all satisfied. I never had heard of any adverse claim.

Q. You never informed any of them but what the title was good?

A. No.

Mr. BRAMHALL: We shall not question that fact, as far as actual notice is concerned.

Q. Mr. Fairchild, state whether this property has gradually increased in value since 1887 or 1888?

A. Its salability has been diminished; the actual, intrinsic value, I think, has been increased by the improvements made and by the growth of the city and all that.

Q. Then, do I understand you to mean that the salability—to wit: the ability to sell a large amount of property—has been diminished or the number of sales?

A. I mean a little more than that. I mean that there are certain owners in embarrassed circumstances who would sell for something less. While the majority of them hold their property at even advanced prices, there are some who have been forced to sell at loss.

Q. Well, the general value of the property has greatly increased?

A. I think the real, intrinsic value has, yes.

343 Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Fairchild, since 1887 the city of St. Paul has increased in population, hasn't it?

A. Yes, sir.

Q. There have been new buildings built, both dwellings and business buildings?

A. Yes, sir.

Q. The intrinsic value of the property in St. Paul, then, has all increased, hasn't it?

A. Yes, sir.

Q. But, still, though its intrinsic value has increased since 1887, its market value has depreciated, hasn't it?

A. It has in many parts. In some parts it has advanced.

Q. And that has come, or may have come, from the fact that certain persons owning property in that vicinity could not afford to hold on any longer, and so sold their property for less?

A. From the stringency of the market, and the necessity of certain persons to sell.

Q. Now, that being true, hasn't the same thing applied to the Midway district? Although, on account of the buildings that have been built, it may be intrinsically worth more, still, is it not true that, because there were people who, on account of the stringency in the money market, could not afford to hold on to their property, and had to part with it for what they could get, that has made the market value of the property less?

344 A. I suppose it is fair to put it in that way. But let me give you an illustration. Some time ago I was trying to sell some lots at a thousand dollars apiece. The prospective purchaser came and told me that he knew of some that had been sold for $550, and said he thought he ought not to pay more than $750. But I

was not forced to sell directly and afterwards he came in and paid me a thousand dollars apiece for the lots.

Q. Well, through this cause of people not being able to hold on to their property, and other causes, it has made a difference in the market value—caused property to depreciate generally, hasn't it?

A. Except that lately certain streets in the city have improved, like Sixth street and Seventh street.

Q. But that caused even Sixth street to depreciate, for the time being, didn't it?

A. Well, Sixth street has not receded any since the building of the New York Life building, and lately it has advanced quite largely.

Q. When you state that you had no notice and that none of the purchasers from the Tatums had any notice of the claim of the Remsen heirs, you mean, of course, notice communicated by any person to them?

A. No; I mean they never had any intimation.

Q. Well, that is, something communicated to them? What you mean is that there has been nothing communicated to you or them in regard to the claim of the Remsen heirs?

A. Yes, sir; nothing communicated, and nothing intimated, and we never had any suspicion about the title.

345

Q. You don't mean to say that, if the record was constructive notice, you didn't have constructive notice. All you mean is that you didn't have any actual notice?

A. Yes; I never had any actual notice or intimation.

Q. And you meant the same thing in regard to the Tatums and in regard to those to whom the Tatums sold?

A. Yes, sir.

Q. Mr. Fairchild, I suppose it is true that real-estate agents, including yourself, are always trying to get as much for property as possible?

A. Well, now, Mr. Hazzard made a point there that is really noteworthy. It is really remarkable what a misapprehension there is in regard to the action of real-estate men. We know that the lower the prices are put the better our chances are for a sale, and we labor to get the seller to take the lowest price possible, and then we set it at that price. I say that, instead of the real-estate men always trying to get the highest prices, they aim to get property listed on their books at the lowest point they can, knowing that their chances are then so much better for making a sale, and they sell it at that price. If it were their own personal property, then it would be different; then they would want to get all they could.

Q. Well, Mr. Fairchild, if I should bring a piece of property to you, or to any real-estate agent, and tell him to sell it, the commission the real-estate man would get would be founded upon the price he received, as I understand it?

346

A. There isn't one-thousandth part of the property placed that way.

Q. Well, when there was a movement of property here a few

years ago wasn't the real-estate agent's commission dependent upon what he sold for?

A. It is yet.

Q. Then, that being true, I say that if I come to you and give you a piece of property to sell, you will get all you can for it, won't you?

A. As a matter of course; but, 999 times out of 1,000, you would fix your price, and we would get you to put that price as low as possible, in order that we might be sure of making a sale. We would never think of advancing the price in order to make a bigger commission. But, if you did come (which would be a very rare thing) and say, "Mr. Fairchild, I want you to sell this property and do the best you can for me," then we would try to do the best we could, of course.

Q. But isn't it true that when people come in to you and are undecided whether they will sell or not, and say, "Mr. Fairchild, how much can I get for this property if I place it in your hands for sale" that then you state to him all you think you can get for it?

A. Well, we try to get it as low as possible. We don't care so much about having it listed with us as we do about getting it sold. I was glad to take that point up, because it struck me that Mr. Hazzard's remark was true.

347 Redirect examination.

By Mr. KELLOGG:

Q. When were these buildings—these houses—built on this property, principally?

A. Oh, they commenced in 1886, 1887, 1888 and 1889.

Q. Any built during the years 1890 and 1891?

A. Yes.

Recross-examination.

By Mr. BRAMHALL:

Q. In making up your estimate of the value of this southwest quarter you did that, as I understand it, the same as the other witnesses—by taking the present value of the property, clear of all improvements?

A. Yes; but regarding the improvements as there.

Q. Regarding the improvements as there?

A. Yes, sir; that is, we understood that you wanted us to appraise, first, the property, and then the improvements.

Q. Now, do you think that that property would be worth as much as the estimates you have given in case there was not a house or a track upon it—in case that 160 acres was just one solid piece of unimproved property?

A. I think that in five years we would get considerably more.

Q. But I mean its present market value; do you think it would be as great as that which you have given?

348 A. Yes; I think so.

Q. Is that estimate that you have given of the value of the property a market value which could today be realized for that property?

A. No, sir; I don't think you could sell it for that.

Q. What do you think it could be sold for today?

A. Oh, it is hard to tell. I have put property up at public sale, after trying to sell it at private sale, and not a man would be there to bid. But that is not a measure of value, any more than when it is kiting—booming.

Q. Isn't it also true that you could not have got that much for the property in June, 1892?

A. You couldn't have sold any large body of it, because the market was dull. You could have sold some.

Q. What you meant to give was what you considered its intrinsic value, and not what it could be sold for on the market today?

A. What an owner had better hold it for than to take less.

Examined by Mr. KELLOGG:

Q. You mean by that the regular market value, not the market value if you were compelled to throw the whole thing on the market and sell it, but as you would arrive at the market value of any property, isn't that true?

A. I mean what a man could afford to pay for it, or what a man owning it could afford to carry it at. I don't measure the
349 value of property either by the prices in a period of inflation or by what you can get in a period of depression.

Q. And your figures are an estimate of the market value?

A. That, I should say, was the market value. If anybody wanted to buy he would be justified in paying that.

Q. And your answer to Mr. Bramhall was that if you were compelled to sell this property, anyway——

A. —that then it would not bring that.

Q. Do I understand that the figures you gave are an estimate of the market value of that property made up from what you know of sales of property, and your general judgment based on that?

A. Yes, sir.

Counsel for defendants then produced and offered in evidence a certified copy of power of attorney from Hannah Tatum to Samuel C. Tatum, dated April 29, 1880.

Marked Defendants' Exhibit "16."

An adjournment was then taken until Thursday morning, June 1, 1893, at 10 o'clock a. m., at which time the parties again appeared before the examiner and the further taking of testimony herein was continued as follows:

GEORGE L. HENDRICKSON, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

350 Q. Mr. Hendrickson, where do you reside?

A. In Ramsey county, on a farm outside of the city.

Q. How long have you lived here?

A. Thirty years.

Q. Do you know the quarter section of land in question?

A. Yes, sir.

Q. Do you know Elizabeth Wetzel, one of the complainants?

A. I have met her.

Q. Do you know Mary J. Remsen, one of the complainants—the wife of George W. A. Remsen, deceased?

A. Yes, sir.

Q. Did you ever hear anything about a claim of these complainants to this land in question?

A. Yes, sir.

Q. Did you have any conversation with Elizabeth Wetzel and Mary J. Remsen, in Philadelphia, relative to this claim?

A. I did.

Q. When was that?

A. That was in December, 1889.

Q. What part of December?

A. It must have been somewhere between the 7th and the 15th; I should say in the second week of December, because I went from Philadelphia to New York and Boston and was back here by Christmas, I remember. I don't know the exact date.

Q. Who was present at that conversation?

351 A. Do you mean the first or the second conversation?

Q. At both. State who was present at the first one.

A. The first conversation was held with Mary J. Remsen, I think—the widow of George W. A. Remsen.

Mr. BRAMHALL: Fix the date of that.

WITNESS: Well, I couldn't say, excepting that it was in the early part of December, and, I think, the day before I had the conversation with Mrs. Wetzel. I found this Mrs. George W. A. Remsen first, and ascertained that she was the wife or grass widow of one of the heirs of the estate of George W. Remsen, and found that the widow of George W. Remsen was still living; she had been married the second time; her name was Mrs. Wetzel. At the second meeting, Mrs. Wetzel and Mrs. Remsen and B. F. Lehman were present.

Mr. BRAMHALL: Where did that occur?

WITNESS: That occurred at the house of Mrs. Wetzel.

Q. What was said there between you and Mrs. Wetzel and Mrs. Remsen?

A. I ascertained, by questioning, first, that she was the reputed widow of George W. Remsen, and stated my errand to be the obtaining of a power of attorney from her and the heirs of George W. Remsen, to obtain title to lands in Minnesota.

Q. What did Mrs. Wetzel say to you about having any land?

A. She said they never had had any land in the West that
352 she knew of, excepting the right, under Mexican warrant, of George W. Remsen.

Q. Well, what did she say had become of that?

A. That they had sold it—made an assignment of the land warrant.

Q. Who did she say attended to the business for her?

A. Isaac Boileau, a justice of the peace and an old friend of the family.

Q. Who was present during that conversation?

A. Mary J. Remsen and B. F. Lehman.

Q. What did you state about how this land was located? I don't mean as to the position of the land, but as to what kind of a land warrant.

A. Mexican land warrant; soldier's right.

Q. State whether you then and there told them of any defect in the assignment or anything, or of any claim that you had to that or made to it.

A. Why, I had to tell them that there was some right in the heirs, to base any claim for power of attorney.

Q. Well, what did you say?

A. I simply said there was a defect in the title; I didn't specify what.

Q. Was anything said there between you and her about there being a defect in the assignment of this land warrant?

A. No.

Q. You didn't say that?

A. No.

Q. Anything else that was said about the land warrant by her or Mary J. Remsen?

353 A. Mary J. Remsen knew nothing of it. Mrs. Wetzel talked a good deal, but she didn't talk very much to the point, excepting that that was the only claim to any land in the West that George W. Remsen ever had.

Q. You say that you told them that this land was located with a Mexican land warrant?

A. Yes.

Q. Issued to whom?

A. Issued to George W. Remsen.

Q. Remsen himself, or his heirs?

A. Issued to the heirs of George W. Remsen.

Q. Did you see any of the other heirs?

A. I did not.

Q. Do you know Mr. William C. Mayne?

A. I met him in Philadelphia; yes, sir.

Q. At that time?

A. At that time.

Q. Did he have any talk or consultation with Mrs. Wetzel and Mary J. Remsen at that time?

A. Not while I was there.

Q. That, you say, was in December, 1889?

A. Yes, sir.

Counsel for defendants then offered in evidence the book of original entry and read the following entries in evidence therefrom:

Heading.	Entry.
Description of tract:	Southwest quarter of section 28, township 29, range 23; 160 acres.
Rate per acre; dollars, cents:	M. S. W.
Purchase-money; dollars,	
354 cents:	28,811
Name of purchaser:	Nathan C. D. Taylor.
Date of sale:	October 31, 1849.
Number of receipt and certificate of purchase:	128.
By whom patented:	(Blank.)
Date of patent:	"
Volume; page:	"

Mr. KELLOGG: It is admitted that this is the book of original entry.

Mr. BRAMHALL: Oh, I suppose so.

It is stipulated that the testimony taken in this case as to the value of improvements is taken upon the merits of the case and not with a view of assessing the improvements under the statute of the State of Minnesota known as the claimants' act, and, should it become necessary to ascertain the value of improvements under said act, the question of their value shall be tried *de novo*.

It is further stipulated that all of the testimony herein is taken subject to its relevancy, materiality and competency, the same to be determined by the court upon the hearing of this cause.

It is admitted that whatever title was acquired by Pennock Pussey has, by various and sundry mesne conveyances, passed to the defendants named in the bill of complaint as having interest in the property and set forth in the schedules of owners of property attached to the answers for the purposes of the trial of this action upon the merits, and said mesne conveyances were warranty deeds in the usual form.

355 J. L. LOVERING, recalled as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. When did you purchase the property that was sold to you, to wit, blocks 1, 2 and 3?

A. I haven't the exact dates with me, but between 1883 and 1885. I didn't buy it all at once. I picked up some smaller pieces later, in 1885.

Q. You bought it before the great rise in the value of property which followed 1885?

A. Oh, yes. I think I bought some of this property—the two smaller pieces—in the early part of 1885.

Q. Did you pay for it in cash?
A. I did, sir.
Q. Do you remember how much you paid?
A. Yes, sir; $46,498.
Mr. BRAMHALL: That was blocks 1, 2 and 3?
A. Yes; that is all my stuff up there.
Q. At various times after this did you acquire other properties through Midway Heights and sell the same?
A. I did.
Q. Did you pay for it?
A. I did.
Q. At the time you purchased any of this property did you have any notice or knowledge of any claim by the Remsen heirs to this property?
A. I did not.
Q. Or know of any defect in the title?
356 A. I did not; I had all my titles examined.
Q. By whom?
A. Some of the best attorneys here. Williams & Goodenow did most of my title-examining. I have their opinion to almost every piece that I bought there.

Cross-examination.

By Mr. BRAMHALL:

Q. In saying that you had no notice or knowledge of the claim of the Remsen heirs at the time you purchased any of this property I suppose you mean by that, Mr. Lovering, the same as the other witnesses explained that they meant—that you had never heard of any claim being made by them, either through them or through any one else—no one had ever told you that they had any interest in it or claimed any interest in it?
A. I had no actual notice served on me, and I tried to find out if there was any notice of record and paid the best attorneys to look it up for me, and they reported a good, clear title.
Q. You had never heard, through your attorneys or otherwise, that the Remsen heirs had any interest in the property?
A. No; or anybody else.

Stipulation.

It is admitted, that in December, 1889, Mr. William C. Mayne, one of the counsel for the complainants, knew that the land
357 warrant in question had been issued to the widow and heirs of George W. Remsen, deceased, and knew of the assignment set up in the complaint, and that said land warrant had been located upon the southwest quarter of section twenty-eight (28), town twenty-nine (29), north of range twenty-three (23) west, Stillwater land office, Minnesota, and a patent issued therefor to Nathan C. D. Taylor, and that he inspected, in said December, 1889, the land warrant, assignment, appointment of guardian (being Com-

plainants' Exhibit No. 4 herein) and the patent, which papers were at the Land Office in Washington; that, during the months of December, 1889, and January and February, 1890, the said Mayne communicated with all of the complainants except the heirs of George W. A. Remsen, deceased, the fact that a Mexican land warrant had been issued to the widow and heirs of George W. Remsen, deceased, for service in the Mexican war, and that there was a question as to the validity of the sale and assignment thereof and a chance to claim the land located thereunder, without disclosing to them the location of the land located under said warrant; that the question of the giving of a power of attorney by the heirs to another party than himself, for the purpose of bringing suit and making settlements for their interest in said land, was discussed; the parties with whom said Mayne had the discussion declined at that time to execute such power of attorney or any power of attorney until they were informed of the location of the land
358 under such warrant and its value; this Mr. Mayne declined to give, because the parties for whom he was acting, and who had discovered this alleged defect in the title had instructed him not to do so; that said negotiations continued until about May, 1890, when they were broken off without his having disclosed to them or any of said heirs, the location of said land or its value; that thereafter he did not act for or represent said Western parties, but did make a personal investigation for the purpose of ascertaining the exact location of this land and the parties in possession under such warrant, and that on August 18, 1891, he caused the complainants to meet at his office, when he communicated to them, for the first time, the exact location of this land, to wit: that it was in the city of St. Paul, in the State of Minnesota, and fully discussed with them the matters stated in the bill, and that he thereafter acted as their attorney, and, with their consent, employed to assist him in the prosecution of their claims as to said land the counselors and solicitors named in the bill herein, and that previous to said August 18, 1891, said Mayne had not acted as attorney or agent of said plaintiffs or any of them in respect to any of the matters in controversy in this suit.

BRAMHALL & TAYLOR,
Plaintiffs' Attorneys.
DAVIS, KELLOGG & SEVERANCE,
Defendants' Solicitors.

359 *Stipulation of Facts.*

It is stipulated by and between the parties to the above-entitled cause that if C. W. Bunn and Wm. Ely Bramhall were duly sworn and testified in this cause, they would testify as follows, to wit:

That they are solicitors for the complainants herein; that William C. Mayne, one of the solicitors for the complainants herein, resides in the city of Philadelphia, Pennsylvania; that said Mayne visited St. Paul on September 17, 1891, for the purpose of obtaining the opinion of local counsel in St. Paul as to the validity of the

claim of the complainants herein and if such opinion should be favorable to the validity of their said claim, to employ local counsel in said St. Paul to act for said complainants, and with him in the preparation and presentation of their said claim to the court; that with that object in view he consulted Clapp, Bramhall & Taylor, attorneys residing in said St. Paul and solicitors for the complainants herein, particularly Mr. Bramhall of said firm.

That an abstract of the property in question in this suit, containing 983 entries, was made by the official abstract clerk of the county of Ramsey, Minnesota, the making of which took considerable time; that said Bramhall undertook to and did examine said abstract and the facts and validity of plaintiffs' claim, and the legal questions involved therein, as expeditiously as he was able in a thorough manner to do, in connection with his other legal business.

That during all of the times herein mentioned, his partner, Mr. Clapp, of said Clapp, Bramhall & Taylor, was attorney gen-
360 eral of the State of Minnesota, and as such fully occupied, and had no time to, and did not devote any time to any of the legal business of the said firm of Clapp, Bramhall & Taylor; that Mr. Taylor, the other member of said firm, was a young man just admitted to practice law from the law school, and without experience at the bar; that said Bramhall concluded his said examination the latter part of December, 1891, when said Mayne again visited said St. Paul, to wit: on December 30, 1891, for the purpose of obtaining the report of said Bramhall upon said matters, and making arrangements with his firm to act for complainants in this matter, and during said visit said Mayne did receive such report and make such arrangements.

That upon the advice and recommendation of said Bramhall that a suit of this character should not be brought unless other local counsel were also of the opinion that complainants had a good claim, Lusk, Bunn & Hadley, also attorneys in said St. Paul, and solicitors for the complainants herein, were consulted in January, 1892; that they took the matter under advisement for about thirty (30) days for the purpose of making a personal examination of the legal questions involved, and did the same as quickly as possible in connection with their other legal work; that at the end of that time said Lusk, Bunn & Hadley consented to act as solicitors for complainants; that as soon as they consented to do so said Bramhall caused maps of the premises to be made, and the abstracts of the property in question to be continued, and examined the title to each piece, parcel and lot constituting a portion of the
361 premises in question, and caused a search to be made in the offices of the clerk of the district court of said Ramsey county and the circuit court of the United States for this district, for judgment liens against the owners of any of said property for the purpose of ascertaining the proper and necessary parties defendant in this cause; that there were 1,133 entries in the abstract of title to this property, and 95 entries as to judgments to be examined and which he did examine; that when he had completed this examina-

tion and ascertained the claims of said parties, he went all over it again for the purpose of verifying and correcting the same.

That all of this involved an immense amount of hard and laborious work, which necessarily consumed a very large amount of time; that he did everything set forth herein as quickly and as expeditiously as he could in connection with his other legal engagements and labors.

That at the same time said Bramhall was making this examination as to parties, Bunn, of said Lusk, Bunn & Hadley, was preparing the bill herein, and as soon as said Bramhall had completed said examination said bill was completed and sent to Mayne at said Philadelphia for examination, and was promptly returned by said Mayne, and as soon as returned put in the hands of the printer, and it and the subpœnas herein were printed as quickly as possible and the bill herein filed on May 28, 1892. That said bill and subpœnas were specially printed by reason of the large number of defendants herein, and to meet the supposed demand for the same.

362 That between August 15, 1891, and the time of the filing of the bill herein there were, as evidenced by said official abstract, seventeen (17) deeds given affecting eighteen (18) lots in Midway Heights, and three (3) lots in Lovering's factory, warehouse and transfer property, and thirteen (13) mortgages affecting eleven (11) lots in Midway Heights and twenty (20) lots in Lovering's factory, warehouse and transfer property, all of which constituted a portion of the property in question.

That George Hendrickson, who has testified in this cause, did not represent any of the solicitors herein on his trip to Philadelphia, and that none of them at the time thereof knew anything about the same, except as appears in his testimony herein, and that the patent issued to Nathan C. D. Taylor on March 20, 1850, set forth in the complaint herein, was filed and duly recorded in the proper county in this State, to wit, in said Ramsey county, on January 8, 1852, and recorded in Book C of Deeds therein, on page 288; that said C. W. Bunn is the Bunn of said Lusk, Bunn & Hadley, and said Wm. Ely Bramhall the said Bramhall of Clapp, Bramhall & Taylor.

That the admission as to what said Bunn and Bramhall would testify to if sworn shall have the same force and effect as if they had regularly testified to said facts herein, and that upon any and all hearings of this matter the defendants may interpose any and all objections as to the materiality of said testimony of said

363 Bunn and Bramhall as if they had been examined in open court, and such objection specifically made to the matter objected to.

BRAMHALL & TAYLOR,
Complainants' Solicitors.
DAVIS, KELLOGG & SEVERANCE,
Defendants' Solicitors.

COMPLAINANTS' EXHIBITS.

No. 1. Marriage certificate of Paul Wetzel to Mrs. Elizabeth Remsen, June 28, 1864.

No. 2. Marriage certificate of George Remsen to Elizabeth Hopkins, May 19, 1830.

No. 3. Bible record of births, marriages and deaths.

No. 4.

DEPARTMENT OF THE INTERIOR, E. P. F.
GENERAL LAND OFFICE, J. A. D.
WASHINGTON, D. C., *June* 2, 1892.

I, William M. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of warrant, No. 28811, for 160 acres, act of 1847, with the assignment and endorsements thereon, is a true and literal exemplification of the original paper.

In testimony whereof I have hereunto subscribed my
364 name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

W. M. STONE,
[SEAL.] *Acting Commissioner of General Land Office.*

WAR DEPARTMENT,
OFFICE OF THE COMMISSIONER OF PENSIONS.

It is hereby certified, that the land warrant No. 28811 for 160 acres has been issued in the name of Elizabeth Remson, widow, Harriet A. Remson, Mary Ann Remson, John W. Remson, Elizabeth Remson and George W. A. Remson, children, heirs-at-law of George W. Remson, deceased, late a private, Company K, Third regiment, U. S. infantry, under date of September 30, 1848, and will be deposited in the General Land Office at the seat of government; and that, pursuant to the provisions of the subjoined ninth section of the act of Congress, approved on the 11th day of February, 1847, entitled "An act to raise for a limited time an additional military force, and for other purposes," this certificate of right to locate said warrant on any quarter section of land subject to private entry will be received at any of the land offices of the United States, under the regulations and restrictions set forth in the accompanying statement of the Commissioner of the General Land Office.

After the location of this certificate, it is to be surrendered to the General Land Office, whence the patent will issue.

365 Given under my hand at the Pension Office this 30 day of September, 1848.

J. L. EDWARDS,
Commissioner of Pensions,
By F. S. EVANS.

(Located and patented.)

Case of Honorable Richard Broadhead, Easton, Pa.

26—94

Hutchinson & Co.

For value received, we, Elizabeth Remson, widow, for myself, and as guardian of the persons and estates of Mary Ann Remson, John Wesley Remson, Elizabeth Remson and George W. A. Remson, minor children of George W. Remson, deceased, duly appointed by the orphans' court of the city and county of Philadelphia; and Harriet A. Remson, do hereby sell and assign unto Nathan C. D. Taylor all our right and title, and all the right and title of the said minor children to the within certificate or warrant No. 28811 for one hundred and sixty acres.

Witness our hands this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

her
ELIZABETH x REMSON,
mark.
For Myself and as Guardian of the Minor Children of George W. Remson, Deceased.
HARRIET A. REMSON.

366 Attest:
ISAAC BOILEAU.
WM. F. SMALL.

Acknowledged before me this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

ISAAC BOILEAU,
Alderman and Justice of the Peace.

COMMONWEALTH OF PENNSYLVANIA, }
City and County of Philadelphia, } *ss:*

I certify that Isaac Boileau, Esquire, before whom the above acknowledgements purport to have been made is an alderman and justice of the peace, duly authorized to administer oaths and take acknowledgements of deeds, etc., and that above is his signature.

In witness whereof I have hereunto set my hand and
[L. S.] affixed my official seal this twelfth day of October, in the year 1848, at Philadelphia, in the State of Pennsylvania.

JOHN SMITH,
Prothonotary of the Court of Common Pleas, etc.

COUNTY OF PHILADELPHIA, *ss:*

I certify that at an orphans' court, for the county aforesaid
367 held at Philadelphia on the sixth day of October, A. D. one thousand eight hundred and forty-eight before the Honorable Edward King, president, and the Honorable Jas. Campbell, Anson V. Parsons and William D. Kelley, justices of said court—

[L. S.] In the Matter of the Estate REMSON Minors.

On petition of William F. Small, Elizabeth Remson was appointed guardian Mary Ann Remson, John W. Remson, Elizabeth Remson and Geo. W. A. Remson minor children of George W. Remson dec'd.

Witness my hand and the seal of the said court, this twelfth day of October, A. D. one thousand eight hundred and forty-eight.

DAVID HANLEY,
Clerk of the Orphans' Court.

Land warrant No. 28811. Register and receiver's No., 128.

STILLWATER LAND OFFICE, *October* 31*st*, 1849.

We hereby certify that the attached military bounty land warrant, No. 28811 was on this day received at this office, from Nathan C. D. Taylor of Saint Croix county, Territory of Minnesota.

A. VAN VORHES, *Register.*
N. GREENE WILCOX, *Receiver.*

I, Nathan C. D. Taylor, of St. Croix county, Territory of
368 Minn., hereby locate the southwest quarter of section No. twenty-eight, in township No. twenty-nine N., of range No. twenty-three (23) W., in the district of lands subject to sale at the land office at Stillwater, containing one hundred and sixty acres, in satisfaction of the attached warrant numbered 28811.

Witness my hand this 31st day of October, A. D. 1849.

NATHAN C. D. TAYLOR.

Attest:
A. VAN VORHES, *Register.*
N. GREENE WILCOX, *Receiver.*

STILLWATER LAND OFFICE, *Nov.* 31, 1849.

We hereby certify that the above location is correct, being in accordance with law and instructions.

N. GREENE WILCOX, *Receiver.*
A. VAN VORHES, *Register.*

Land warrant certificate No. 28811.

I, Nathan C. D. Taylor, being desirous of locating the southwest quarter of section No. twenty-eight in township No. twenty-nine (29) north of range No. twenty-three (23) W., in the district of lands subject to sale at the land office at Stillwater, with the attached military land warrant certificate No. 28811, issued under the provisions of the ninth section of the act of Congress approved February
369 11, 1847, do solemnly swear that from my own knowledge of the fact, after actual inspection of the said tract of land, on or about the 30th day of October, A. D. 1849, there was not at that time an actual settlement and cultivation upon any part of said land, nor was there any person or persons residing upon it.

And I do verily believe that there is no actual settlement and cultivation or any person or persons residing upon any part of said land at this time.

NATHAN C. D. TAYLOR.

Subscribed and sworn to before me this 31st day of Oct., A. D. 1849.

N. GREENE WILCOX,
Receiver of the Land Office.

I request my patent to be sent to ——.

Endorsed on the back thereof:

No. 28811..... 160

47

Elizabeth Remson, widow, Harriet A. Remson, Mary Ann Remson, John W. Remson, Elizabeth Remson and George W. A. Remson, children, heirs-at-law of George W. Remson, dec'd late a priv. Comp. K.; 3d reg. U. S. inf. Nathan C. D. Taylor ass. of said Elizabeth Remson in her own right and as guardian of the aforesaid minor heirs. S. W. ¼ 28, 29 N., 23 W., Stillwater, Minn. See money letter 40273, 160. Aug. 8, '89 to C. of P. Pat'd Mar. 20, 1850. Rec. vol. 17, p. 385, June 4, '89 see to Fred'k C. Stevens, *storas.*

Hon. Rob't Smith, present.

370 Over.

No. 28811, Nathan C. D. Taylor, filed Oct. 31, 1849. S. W. ¼ sec. 28, town 29 N., range 23 W.

Patent to be delivered to Hon. R. Smith, present.

No. 128.

Sep. 14, '91, ctfd. copy of warrant and the assignment endorsed thereon trans. to Wm. C. Mayne 926 Walnut St., Phila., Penna.

Cost of copy..... 2 20
Am't ret'd..... 2 80

5 00

M. L. 60617.

No. 5. Certificate as to record of marriage of George Remsen and Elizabeth Hopkins.

No. 6. Page of said original record of marriage marked for identification.

No. 1. Page of original record of marriage of Geo. W. A. Remsen to Mary J. Derbeshier marked for identification.

No. 2. Copy of record of births, marriages and deaths.

No. 3.

371 Orphans' Court, Philadelphia City and County.

In the Matter of the Minor Children of GEORGE W. REMSEN, Deceased.

To the hon. the judges of the orphans' court of the city and county of Philadelphia:

The petition of the undersigned respectfully showeth that Mary Ann, John Wesley, Elizabeth and George W. A. Remsen, minor

children of George W. Remsen, deceased, who are all under the age of fourteen (14) years, have no guardian legally appointed to take charge of their persons and estates, and he therefore prays the honorable court to appoint such a guardian for them, and would respectfully recommend their mother Mrs. Elizabeth Remsen, as a suitable and competent person.

And he will ever pray, etc.

WM. F. SMALL,
For Minor Children, etc.

Philadelphia, Oct. 6, 1848.

Wm. F. Small being duly sworn according to law in open orphans' court, declares and says that the amount of property likely to come into his hands as the guardian of the minor children of George W. Remsen, deceased, will not exceed the sum of one hundred dollars ($100).

WM. F. SMALL.

Sworn to and subscribed in open orphans' court, this 6th day of October, 1848.

JNO. A. J. LEWIS,
Deputy Cl'k, O. C.

372 Endorsement.

In the matter of the estate of the minor children of George W. Remsen, deceased.

Petition for appointment of guardian.

O. C. Oct. 6, 1848.

Mrs. Elizabeth Remsen, g'd'n, without security.

Book No. 41, page 379.

In the Matter of the Estate of REMSON Minors.

On petition, Mrs. Elizabeth Remsen was appointed guardian of the persons and estates of Mary Ann, John Wesley, Elizabeth and George W. A. Remsen, minors, without security being required.

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

I hereby certify the foregoing to be a true and accurate copy of the petition of Wm. F. Small for minor children of George W. Remsen, deceased, and the decree of the court of October 6, 1848, thereon, also the docket entries, as the same appears of record in the office of the clerk of the orphans' court of the said county.

Witness my hand and seal of said court this 17th day of December, A. D. 1892.

[SEAL.]

WM. G. SHIELDS,
Clerk Orphans' Court.

373 "12-20-'92. H. R. E." Record of marriage of Jacob Heyer to Harriet A. Remsen, marked for identification.

DEFENDANTS' EXHIBITS.

No. 1. Certified copy of deed from John R. Tatum and wife to Samuel C. Tatum, of date June 5, 1873, for undivided ⅓ of S. W. ¼ 28, 29, 23; consideration, $3,350.

No. 2. Certified copy of bond from Allen Pierse to Pennock Pusey, of date May 29, 1854, for said S. W. ¼.

No. 3. Certified copy of deed from Allen Pierse and wife to Pennock Pusey, of date June 2, 1855, for said S. W. ¼, consideration, $3,000.

No. 4. Deed from Pennock Pusey to John W. Tatum, of date May 4, 1860, for said land, consideration, $3,200.

No. 5. Abstract of title.

No. 6. Certified copy of deed from Pusey to M. & P. R. R. Co., for right of way across said property, of date July 19, 1858, consideration, $1.00.

No. 7. Certified copy of deed from Nathan C. D. Taylor to C. D. Gilfillan, of date April 28, 1854, for said S. W. ¼, consideration, $600.

374 No. 8. Certified copy of bond for deed in Defendants' Exhibit No. 7.

No. 9. Certified copy of deed from C. D. Gilfillan to Henry McKenty of date April 28, 1854, for said land. Consideration, $1,000.

No. 10. Certified copy of deed from Henry McKenty to Allen Pierse of date May 22, 1854, for said land. Consideration, $2,000.

No. 11. Certified copy of deed from Samuel C. Tatum and wife and Hannah Tatum to St. P., M. & M. R'y Co. of date May 18, 1880, for westerly 60 acres of said southwest quarter. Consideration, $11,540.

No. 12. Map of Minnesota Transfer property.

No. 13. Page 16, volume 2 of Donnelly's Atlas of St. Paul.

No. 14. Dual city map.

No. 15. Map of St. Paul.

No. 16. Certified copy of power of attorney from Hannah Tatum to Samuel C. Tatum of date April 29, 1880, to sell and convey land in question.

375 United States Circuit Court of the District of Minnesota.

Term Minutes, June, A. D. 1893.

JULY 28, 1893, FRIDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. John A. Williams, judge.

ELIZABETH WETZEL *et al.*
vs.
MINNESOTA TRANSFER RAILWAY COMPANY *et al.* } C. Eq. 610.

This cause coming on to be heard upon the pleadings, final proofs and arguments of counsel the same is argued on behalf of the complainants by C. L. Bunn, and the hearing not being concluded at

the hour of adjournment, it is ordered that further proceedings herein be and they hereby are postponed until tomorrow morning at 10 o'clock.

T. M., vol 8, page 93.

United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1893.

JULY 29, 1893, SATURDAY MORNING.

Court opened pursuant to adjournment.
Present: Hon. John A. Williams, judge.

ELIZABETH WETZEL *et al.*
vs.
MINNESOTA TRANSFER RAILWAY COMPANY *et al.* } Eq. C. 610.

This cause coming on to be further heard upon the pleadings, final proofs and arguments of counsel the same is argued on behalf of the defendants by C. K. Davis, and the trial of said cause not being concluded at the hour of adjournment, it is ordered that further proceedings herein be and they are hereby postponed until Monday morning at 10 o'clock.

T. M., vo. 8, page 95.

United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1893.

JULY 31, 1893, MONDAY MORNING.

Court opened pursuant to adjournment.
Present: John A. Williams, judge.

ELIZABETH WETZEL *et al.*
vs.
MINNESOTA TRANSFER RAILWAY COMPANY *et al.* } C. Equity. 610.

This cause coming on to be further heard upon the final
376 proofs, pleadings and arguments of counsel the same is further argued by the solicitors for the respective parties, duly submitted and by the court taken under advisement.

T. M., vol. 8, page 96.

United States Circuit Court, Eighth Circuit, District of Minnesota, Third Division. In Equity.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA TRANSFER RAILWAY COMPANY *et al.*, Defendants.

AUGUST 24, 1893.

W. C. Mayne, Clapp, Bramhall & Taylor, and Lusk, Bunn & Hadley, for complainants.

Davis, Kellogg & Severance, and C. H. Benedict, for defendants.

WILLIAMS, *J.*:

This action concerns one hundred and sixty acres of land, described in the complaint, situated in the corporate limits of the city of St. Paul, between that city and Minneapolis. Elizabeth Wetzel is alleged to be the widow of George W. Remsen, and the other complainants are their surviving children and grandchildren.

The bill states that George W. Remsen became, in his lifetime entitled to a land warrant, as a soldier in the United States Army, under the act of Congress February 11, 1847, the United States duly issued a land warrant for a hundred and sixty acres of land, in the name of Elizabeth Remsen, widow, Harriet A. Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. Remsen, children and heirs-at-law of the said George, which warrant entitled them, under section 9 of said act, to locate it on any quarter section of Government land subject to private entry. That when the warrant was issued and assigned, all the complainants, but Elizabeth Remsen were under fourteen years of age, except Harriet A., who was seventeen.

That on or about October 6, 1848, the widow was duly appointed the guardian of the persons and estates of all the children except Harriet A. by the orphans' court of the city of Philadelphia. That on October 11, 1848, at Philadelphia in the State of Pennsylvania, she purporting to act for herself, and as guardian for said
377 minors, joined with said Harriet A. and together attempted to assign said land warrant by the instrument following, delivered and executed on that day to one Nathan C. D. Taylor:

"For value received, we, Elizabeth Remsen, widow, for myself and as guardian of the persons and estates of Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen, and George W. A. Remsen, minor children of the — George W. Remsen, deceased, duly appointed by the orphans' court of the city of Philadelphia, and Harriet A. Remsen, do hereby sell and assign unto Nathan C. D. Taylor all our right and title, and all the right and title of the minor children, to the within certificate or warrant No. 28811 for one hundred and sixty acres.

Witness *my* hands this 11th day of October, 1848, at Philadelphia, in the State of Pennsylvania.

her
ELIZABETH x REMSEN,
mark.
For Myself and as Guardian of the Minor Children of George W. Remsen, Deceased.
HARRIET A. REMSEN.

Attest:
ISAAC BOILEAU.
WM. F. SMALL.

Acknowledged before me this 11th day of October, 1848, at Philadelphia, in the State of Pennsylvania.

ISAAC BOILEAU,
Alderman and Justice of the Peace."

This sale and assignment, the bill charges to be void, because such court never made any order authorizing the guardian to assign the interests of the minors in the warrant, and also of the United States, to wit, the act of 1847, such guardian had no authority, without order of said orphans' court, to assign said estate of said minors.

The bill also alleges that the widow Elizabeth, by the law of Pennsylvania, had only a common-law dower interest in said real estate, which could not be sold or assigned before admeasurement; that Harriet was a minor and was at the time the wife of one Jacob Heyer, and that by the law of Pennsylvania her conveyance was void without her husband's signature. That she did not know what the instrument was, or that she had any interest in the warrant, or that her father had ever been entitled to the warrant, but
378 that she signed in such ignorance at the request of her mother, who represented that the signature was to a receipt, and of a formal character.

That she never received any consideration, and remained until within eight months prior to the filing of the bill in total ignorance as to the matter stated therein.

That Taylor as assignee located the warrant upon the southwest quarter of section twenty-eight in township twenty-nine, north of range twenty-three west, Minnesota, upon lands now situated in the county of Ramsey, on or about the 20th day of March, 1850, and that thereafter he received a patent from the United States bearing that date, of which the following is a copy:

"The United States of America to all — whom these presents shall come, Greeting:

Know ye that in pursuance of an act of Congress entitled 'An act to raise for a limited time an additional military force and for other purposes, approved February 11th, 1847,' Elizabeth Remsen, widow, Harriet A. Remsen, Mary Ann Remsen, John W. Remsen, Elizabeth Remsen and George W. A. Remsen, children, heirs-at-law of George W. Remsen, deceased, late a private of Company H,

Third regiment United States infantry, having deposited in the General Land Office a warrant in their favor numbered 28811; there is therefore granted by the United States unto Nathan C. D. Taylor, assignee of said Elizabeth Remsen, in her own right, and as guardian of the aforesaid minor heirs and to his heirs, the southwest quarter of section twenty-eight, in township twenty-nine north of range twenty-three west, in the district of lands subject to sale at Stillwater, Territory of Minnesota, containing one hundred and sixty acres, etc."

That said patent is recorded in the office of the register of deeds of Ramsey county, Minn.

That Taylor afterwards executed divers conveyances of the land by and under the patent passed to the numerous defendants named.

That said Mary Ann Remsen was born on August 12, 1835, and died June 12, 1882, leaving surviving her children and sole heirs-at-law, Emma F. Hergesheimer and Maggie L. Beckman.

John Wesley Remsen is one of the before-mentioned minor children of said George W., and was born on the 8th day of November, 1837. The said Elizabeth W. Remsen was born on the 22d
379 day of February, 1840, and died on the 11th day of October, 1862, unmarried and without issue, and her interest then descended to complainants, as provided by the statutes of Minnesota. Said George W. A. Remsen was born on the 18th day of September, 1842, and died in 1878, leaving Mary J. Remsen his widow, George W. Remsen, Clara B. Remsen and Mabel Remsen his children, said widow and children being his sole heirs-at-law.

Stipulation.

In December, 1889, Mr. William C. Mayne, one of the counsel for the complainants, knew that the land warrant in question had been issued to the widow and heirs of George W. Remsen, deceased, and knew of the assignment set up in the complaint, and that said land warrant had been located upon the southwest quarter of section twenty-eight (28), town twenty-nine (29) north, of range twenty-three (23) west, Stillwater land office, Minnesota, and a patent issued therefor to Nathan C. D. Taylor, and that he inspected, in said December, 1889, the land warrant, assignment, appointment of guardian (being Complainants' Exhibit No. 4 herein), and the patent, which papers were at the Land Office in Washington; that during the months of December, 1889, and January and February, 1890, the said Mayne communicated with all of the complainants except the heirs of George W. A. Remsen, deceased, the fact that a Mexican land warrant had been issued to the widow and heirs of George W. Remsen, deceased, for services in the Mexican war, and that there was a question as to the validity of the sale and assignment thereof, and a chance to claim the land located thereunder, without disclosing to them the location of the land located under said warrant; that the question of the giving of a power of attorney by the heirs to another party than himself for the purpose of bringing suit and making settlements for their interest in said lands was

discussed; the parties with whom said Mayne had the discussion declined at that time to execute such power of attorney, or any power of attorney until they were informed of the location of the land under such warrant and its value; this Mr. Mayne declined to give, because the parties for whom he was acting and who had discovered this alleged defect in the title had instructed him not to do so; that said negotiations continued until about May, 1890, when they were broken off without his having disclosed to them or any of the said heirs the location of said land or its value; that thereafter he did not act for or represent said Western parties, but did make a personal investigation for the purpose of ascertaining the exact location of this land, and the parties in possession under such warrant, and that on August 18th, 1891, he caused the
380 complainants to meet at his office, when he communicated to them for the first time the exact location of this land, to wit, that it was in the city of St. Paul, in the State of Minnesota, and fully discussed with them the matters stated in the bill, and that he thereafter acted as their attorney, and with their consent employed to assist him in the prosecution of their claims as to said land, the counsellors and solicitors named in the bill herein, and that previous to the said August 18th, 1891, said Mayne had not acted as attorney or agent of said plaintiffs or any of them in respect to any of the matters in controversy in this suit.

That William C. Mayne, one of the solicitors for the complainants herein, resides in the city of Philadelphia, Pennsylvania; that said Mayne visited St. Paul, on September 17, 1891, for the purpose of obtaining the opinion of local counsel in St. Paul as to the validity of the claim of the complainants herein, and if such opinion should be favorable to the validity of their said claim, to employ local counsel in said St. Paul, to act for said complainants, and with him in the preparation and presentation of their said claim to the court; that with that object in view he consulted Clapp, Bramhall & Taylor, attorneys residing in said St. Paul and solicitors for the complainants herein, particularly Mr. Bramhall of said firm.

That an abstract of the property in question in this suit, containing 983 entries, was made by the official abstract clerk of the county of Ramsey, Minnesota, the making of which took considerable time; that said Bramhall undertook to and did examine said abstract, and the facts and validity of plaintiffs' claim, and the legal questions involved therein, as expeditiously as he was able in connection with his other legal business.

That during all the times herein mentioned his partner Mr. Clapp of said Clapp, Bramhall & Taylor, was attorney general of the State of Minnesota, and as such fully occupied, and had no time to, and did not devote any time to any of the legal business of the said firm of Clapp, Bramhall & Taylor; that Mr. Taylor the other member of said firm was a young man just admitted to practice law from the law school, and without experience at the bar; that said Bramhall concluded his said examination the latter part of December, 1891, when said Mayne again visited St. Paul, to wit, on December 30, 1891, for the purpose of obtaining the report of said Bramhall

upon said matters, and making arrangements with his firm to act for complainants in this matter, and during said visit said Mayne did receive such report and make such arrangements.

That upon the advice and recommendation of said Bramhall that a suit of this character should not be brought unless
381 other local counsel also were of the opinion that the complainants had a good claim, Lusk, Bunn & Hadley, also attorneys in said St. Paul, and solicitors for the complainants herein were consulted in January, 1892, that they took the matter under advisement for about thirty (30) days for the purpose of making a personal examination of the legal questions involved, and did the same as quickly as possible in connection with their other legal work; that at the end of that time said Lusk, Bunn & Hadley consented to act as solicitors for complainants; that as soon as they consented to do so said Bramhall caused maps of the premises to be made, and the abstracts of the property in question to be continued, and examined the title to each piece, parcel and lot constituting a portion of the premises in question, and caused a search to be made in the offices of the clerk of the district court, of said Ramsey, and the circuit court of the United States for this district, for judgment liens against the owners of any of said property for the purpose of ascertaining the proper and necessary parties defendant in this cause; that there were 1,133 entries in the abstract of title to this property; and 95 entries as to judgments, to be examined and which he did examine, that when he had completed this examination and ascertained the claims of said parties, he went all over it again for the purpose of verifying and correcting the same.

That all of this involved an immense amount of hard and laborious work, which necessarily consumed a very large amount of time, that he did everything set forth herein as quickly and as expeditiously as he could, in connection with his other legal engagements and labors.

That at the same time said Bramhall was making this examination, as to parties, Bunn of said Lusk, Bunn & Hadley, was preparing the bill herein, and as soon as said Bramhall had completed said examination said bill was completed and sent to Mayne at said Philadelphia for examination, and was promptly returned by said Mayne, and as soon as returned put in the hands of the printer, and it and the subpœnas herein were printed as quickly as possible, and the bill herein filed on May 28th, 1892. That said bill and subpœnas were specially printed by reason of the large number of defendants herein, and to meet the supposed demand for the same.

That between August 15, 1891, and the time of the filing of the bill herein there *was*, as evidenced by said official abstract, seventeen (17) deeds given affecting eighteen (18) lots in Midway Heights and three (3) lots in Lovering's factory, warehouse and transfer
382 property, and thirteen (13) mortgages affecting eleven (11) lots in Midway Heights, and twenty (20) lots in Lovering's factory, warehouse and transfer property, all of which constituted a portion of the property in question.

Upon this statement of facts several propositions of law have been submitted by counsel on either side; but with my view of the case, it is utterly unnecessary, and would be productive of no good result, to notice any of them, save the one governing principle that applies to this case.

It is clear to my mind that the important question is the question of laches. This case comes so clearly within the doctrine announced by the Supreme Court of the United States in the case of Felix *v.* Patrick, 145 U. S. 317, that it is unnecessary in the decision of this case, to pass upon any of the other questions raised by counsel on either side. In that case Sophia Felix was an Indian of the Sioux tribe, residing upon their reservation, and owing to her tribal relations was for a long time unable to sue in the courts of the United States; she was the owner of certain land scrip which the defendant Patrick obtained from her under circumstances, as stated in the complaint that amounted to an absolute fraud upon her rights, and were but little removed from larceny of the scrip. The scrip was located upon the lands described in the suit, and after the lapse of twenty-eight years, and after the tribal relations has been severed, and the rights of herself and her heirs to maintain an action in the courts of the United States had accrued, suit was brought for the lands. The property in the meantime had increased in value greatly, so that its value at the time of bringing suit was over a million dollars. The court in that case uses the following language: "But conceding that the plaintiffs were incapable so long as they maintained their tribal relations, of being affected with laches, and that those relations were not dissolved until 1887 when they were first apprised of their rights to this land, it does not necessarily follow that they are entitled to the relief demanded by the bill. The real question is whether equity demands that a party who twenty-eight years ago was unlawfully deprived of a certificate or muniment of title of the value of $150 should not be put in possession of property admitted to be worth over a million. The disproportion is so great that the conscience is startled, and inquiry is at once suggested whether it be possible that the defendant has been guilty of fraud so gross as to involve consequences so disastrous. In a court of equity at least the punishment should not be disproportionate to the offense, and the magnitude of the consequences in this case demands of us that we should consider carefully the nature of the wrong done by the defendant in requiring the title to these lands."

383 The case at bar is a much stronger one than that of Felix against Patrick. In that case the scrip as has been stated, was obtained from the Indian woman by false representations and actual fraud. In the case at bar the land warrant was purchased from the widow of the deceased soldier Remsen, both in her individual capacity, and as guardian for her children and the children of the deceased soldier, and the full value thereof was paid to her in money. The land warrant was located upon lands in the then Territory of Minnesota, and was accepted by the officers of the land department of the United States, together with the assignment upon it, as being in all respects sufficient in law. The indorsement upon

it by the land officers was a description of the land upon which the scrip had been laid. The warrant was then forwarded to the proper department in Washington, and there it has lain ever since the indorsement upon it, from which the plaintiffs could at any time by a simple enquiry have ascertained upon what lands the warrant was laid, and thus have been enabled to institute this action within a reasonable time, if they thought they had any rights in the matter. Instead of doing that, however, they have allowed their rights, if they had any, and their claims to remain dormant for nearly half a century, until the lands that they now seek to obtain by this action are of the value of one million, and the improvements upon them of the value of two million dollars; until a large portion of the original quarter sections has been platted into blocks and lots upon which nearly three hundred people have purchased lots and erected houses. Upon a portion of the land iron rails have been laid, and a complicated system for the purpose of railway transfer has been arranged thereon over which is carried much of the traffic of two continents; and to say now that under these circumstances these plaintiffs are entitled to the remedy sought by this bill, would in my judgment be the monumental wrong of this age.

Courts of equity are generally asked to right some wrong or to grant some relief which cannot be obtained in a court of law; but in this case the plaintiffs originally had no wrong to complain of, they received the full value of the land warrant granted by the Government to their ancestor for his services in the war in Mexico. This is not only shown by the proof in the case, but is conceded by the learned counsel for the complainants; for these land warrants were valued by the Government at the sum of one hundred dollars, and any one entitled to a land warrant might receive that sum in lieu thereof. Here we find that Mrs. Remsen received for herself and as guardian of her children, the full sum of one hundred
384 dollars, and the purchaser of the land warrant paid all fees necessary to affect its transfer to him, so that plaintiffs have no standing upon the equities of the case in this court. They were not defrauded in any manner, as was the Indian in the case of Felix against Patrick, and I can conceive of no reason, why they should be entitled to invoke the aid of a court of chancery in this matter.

Let a decree be entered in this case for the defendants upon the original bill, and let the complainants take nothing by their suit, and further let the title of the defendants be forever quieted in and to the lands described in the complaint.

Indorsed: Decision. Judge Williams, ordering decree for defendants. Filed Aug. 25, 1893. Oscar B. Hillis, clerk.

United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Marie J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants.

Affidavit of Disbursements and Notice of Taxation of Costs.

Disbursements.

Docket fee	$20 00
Printer's fees, printing brief	137 55
Paid Ambrose Tighe, examiner, taking testimony and transcribing same, including stenographer	130 26
Paid Henry Edmunds, examiner, Philadelphia	46 38
Paid for searching records, certified copies of records probate court, Philadelphia	10 00
Paid for certified copies records in Washington, including land warrant copies probate records attached	10 00
Paid for certified copied deeds introduced in evidence	10 50
Paid for printing answers, cross-bill and exhibits	54 75
Paid for abstracts of property	58 50

385 Witnesses as follows:

J. L. Lovering, St. Paul, Minn.,		1 day, 2 miles	1 60
Geo. L. Hendrickson,	"	1 day, 12 miles	2 10
H. S. Fairchild,	"	1 day, 2 miles	1 60
J. B. Rossman,	"	1 day, 12 miles	2 10
Geo. H. Hazzard,	"	1 day, 12 miles	2 10
Charles H. Pratt,	"	1 day, 12 miles	2 10
James J. Hill,	"	1 day, 2 miles	1 60
David C. Sheppard,	"	1 day, 2 miles	1 60
D. M. Sullivan,	"	1 day, 12 miles	2 10
John B. Sanborn,	"	1 day, 2 miles	1 60
Simeon P. Folsom,	"	1 day, 2 miles	1 60
Chas. D. Gilfillan,	"	1 day, 236 miles	13 30
Pennock Pusey, Titusville, Penn.,		2 days, 236 miles	33 00
John R. Tatum, Wilmington, Del.,		2 days, 100 miles	8 00
Hannah Tatum, Phil., Penn.,		2 days, 2 miles	3 10
			555 44
Less amount deducted by consent			99 00
			$454 44
Clerk's fees (def'ts)			23 15
			$477 59

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Frank B. Kellogg being first duly sworn, doth depose and say that he is one of — attorney- of the defendants in the above-entitled cause; that the foregoing is a true and correct statement of the costs and disbursements of said defendants in the above-entitled proceedings, and that all of the items of such disbursements have been actually and necessarily paid or incurred therein, by and on behalf of said defendants; that each of said witnesses above named was a necessary and material witness for the defendants; that the first twelve witnesses above named were present and sworn and testified in said cause within this State that they each traveled the number of miles within this State in going to and returning from the place of hearing of said cause and attended court before a referee the number of days set opposite their names; that the last three named witnesses traveled each the number of miles to attend said hearing and attended the number of days set opposite their names.

FRANK B. KELLOGG.

Subscribed and sworn to before me on this 3rd day of October, A. D. 1893.

[NOTARIAL SEAL.] C. W. G. WITHEE,
Notary Public, Ramsey Co., Minn.

386 SIR: Please take notice that the costs and disbursements of the defendants in the foregoing-entitled action will be taxed by and before Oscar B. Hillis, clerk of the above-named court at his office in the custom-house, at the city of St. Paul, Minnesota, on Friday, the sixth day of October, 1893, at ten o'clock in the forenoon of said day, and that the foregoing is a statement of the items of costs and disbursements that will then and there be claimed on behalf of said defendants and inserted in the judgment in said action that will then and there be entered.

Very respectfully,
DAVIS, KELLOGG & SEVERANCE,
Attorneys for Defendants.

Lusk, Bunn & Hadley, W. D. Mayne, and to Clapp & Bramhall, attorneys for complainants.

Indorsed: Affidavit of disbursements and notice of taxation of costs. Due service of the within notice is hereby admitted this 4th day of October, 1893. Lusk, Bunn & Hadley, pl'ffs' att'y-. Filed Oct. 13, 1893. Oscar B. Hillis, clerk.

In the Circuit Court of the United States for the District of Minnesota, Third District. In Equity.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA TRANSFER RAILWAY COMPANY, GREAT NORTHERN Railway Company, Maitland E. Graves, Lucia Clark, Florence Lucia Clark, Archie Guthrie Clark, Fred Morse Clark, Louisa E. White, William O. Winston, Fendall G. Winston, Philip B. Winston, David C. Shepard; Peter Siems, Frank P. Shepard, Alvin W. Krech, James F. Jackson, William Deering, Rufus C. Jefferson, Charles F. Backus, L. L. Bennett, George Wilson, Jr., Nels P. Fransen, James L. Lovering, Leonard W. French, Hiram Backus, Lilton E. Shields, William H. Cleary, John A. Cleary, George Strong, Emily R. Fisher, Frank H. McKelvey, Franklin C. Ford, George F. Copeland, Dora Marshall, Clinton Johnson, Leonard J. Dobner, Isabella Z. Kingsley, The Ramsey County Land & Loan Company, Henry S. Fairchild, Elizabeth Brophy, Edward Howard, Carrie L. Backus, Julia M. Callahan, Lewis H. Lipman, Mary C. Braden, Joseph A. Humphreys, Samuel M. Magoffin, Eleanor Tatum, Amy T.
387 Hilles, Elizabeth T. Long, John Weber, William W. Bixby, Charles L. Walker, William H. Wright, Clarence E. Stone, Frank Crawshaw, Frank Greening, Desire H. Michaud, Josephine A. Huber, Lydia J. Andrew, Herbert M. Crosby, Clinton J. Backus, Amanda E. Johnson, Charles A. Baker, Luther B. Little, George H. Bridgman, John B. Sanborn, Emma E. Chapman, Henry C. V. Hunderup, Benjamin W. Smith, Jed. L. Washburn, Maurice Tracy, Maurice C. Tracy, William H. Fuller, John B. Rossman, Sidney E. Bibbins, Charles E. Lingquist, Charles E. Lindquist, Harcourt Mott, Ola S. Johnson, N. B. Hogg, Jr., E. J. Fargo, John H. Moreland, Willis Danforth, James R. McKay, Kingsley H. Burrell, Caroline M. Burrell, Edith E. Thomas, John Luby, Samuel Strows, Mary C. Thaw, Emily H. Miller, Jennie A. Severn, Thomas W. Martin, Henry Bosse, Kate L. McDermott, John Johnson, Henry C. Babcock, George Lamb, Michael Towey, Charrie A. Morton, Dan. Baker, James C. Hening, Rachel H. Henning, Addie B. Mohler, Robert C. Wiley, Fannie W. Wiley, Tinsley V. Means, Ella B. Clark, Martin Johnson, Andrew G. Johnson, John Aronson, Henry L. Little, Hans Peterson, Owen Williams, Conrad Peters, Levi C. Emery, George R. Bartron, Charles F. Young, Mary Jane Ellison, Agnes A. Hamilton, W. J. O'Toole, M. E. Nelson, Frank A. Ackerman, Cybele B. Flower, Clara W. A. Blackman, Charles W. Heath, Nels Frederickson, Anson B. Baker, Anton Peterson, Robert K. Evans, Richard Evans, Jr., Richard Eavans, Jr., Joseph J. Vilsmeyer, Christian Bendixen, Charles P. Bartsow, Mary C. Tatum, The St. Paul Congregational Union of Ramsey County, Minnesota; Marion E. Mar-

tin, Mary Brosnahan, Bridget I. O'Leary, Annie M. O'Leary, Bridget Eagan, Mary Eagan, Maria C. Killiam, Thomas Helgesen, The State Bank of Minneapolis, Orin L. Benson, Frank W. Buswell, Lizzie J. Smith, Wallace W. Campbell, George G. Benz, Oliver J. Graham, Freeman J. Page, Erastus H. Murray, Emma G. Lockwood, Michael O'Neill, Sadie E. Martin, Luther B. Little, Thomas G. Harvey, M. P. Ryan, Augusta A. Garrison, James O. Roberts, Jacob A. Roberts, William G. Chapman, John A. Lindquist, Mary C. Crawshaw, William W. Holcomb, Anthony Schimansky, Edward B. Storer, Paul J. Lowell, Elise Hohneck, Lily M. Brown, Hans Monson, Charles O. Moline, Emil Moline, John Larson, Lewis Larson, Carrie Larson, Annie Larson, Andrew Olson, John August Peterson, John H. Cunningham, Thomas A. Carlson, Klaus J. Larson, Prindle Partridge, Eli S. Montri, Laurits A. Larsen, Christopher Bendixen,
388 William R. Murray, Frederick Bell, Carrie A. Morton, E. I. Hoyt, Mary Little, John Olson, August Olson, Albin Severson, Eleanora Langevin, Mary Eleanora Michaud, Emma Flanagan, Louis A. Langevin, Eugene A. Langevin, and Ida May Langevin, Sole Legatees and Heirs of Edward Langevin, Deceased; The St. Paul Trust Company, Mary H. Farquhar, Peter S. Roberts, Wm. H. Willsey, Hannah Austrian, The German-American Building Association, The Lombard Investment Company, Maria W. Curtis, William K. Richardson and Winslow Warren, Trustees under the Will of Henry Richardson, Deceased; William Brewster, Edward Motley, Maria A. Gilbert, Charles H. Wagner, I. F. Johnson, Gardiner Green, Jr., Executor of the Will of Rachel R. Wheeler, Deceased; W. B. Hopkins, The Savings Bank of St. Paul, J. W. Frederick, Alfred F. Cooley, Oramel A. Richardson, John W. Bookwalter, as James Leffel & Co.; The National Bank of Chambersburg, N. F. Towne, Mary M. Bacon, William B. Martin, John J. Guile, George Griffore, The Rice Street Building Society, Caroline Coleman, Mark W. Fay, Wilhelmina F. Phelps, The Simonds Manufacturing Company, Frank A. Berry, Howard Marston, The Workingmen's Building & Loan Society, The Ramsey County Building Society, Sarah C. Moore, Nora Brown, The Iowa Land Company, Limited; Elmer J. Barker, Martha R. Knauff, Pauline A. Hannaford, Horace E. Stevens, Dwight F. Brooks, Lester R. Brooks, and Anson J. Brooks, Partners as Brooks Brothers; L. G. Kilborn, Eleanor Tatum, Administratrix of the Estate of Samuel C. Tatum, Deceased, and Samuel C. Tatum, Jr., Deceased; Homar C. Potter, The Globe Building Company, F. L. Elwer, L. G. Crandall, C. M. Stone, W. H. Stone, and C. E. Tichener, Partners as Crandall, Stone & Company; William W. Parker, Thomas Tracy and Lawrence Tracy, Partners as Tracy Brothers; William F. Nelson, The Bank of Minneapolis, Andrew Borklund, The J. P. Gribben Lumber Company, C. H. McCormick and L. J. McCormick, Partners as C. H. & L. J. McCormick; William Peterson and Samuel B. Jelke, Partners as William Peterson & Company;

Anthony Kelly, Hiram J. Wagner and John I. Black, Partners as Anthony Kelly & Company; William A. Campbell and George R. Lewis, Partners as Campbell & Lewis; Chester G. Higbee, Charles Bergquist, Gilbert E. Holien and Charles B. Blomgren, Partners as Holien & Blomgren, *Partners as Holien & Blomgren;* The St. Croix Lumber Company, Ole Oleson, Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton,
389 Doing Business as the St. Paul Stained Glass Company; The Bohn Manufacturing Company, B. F. Knauft; Lawrence I. Casserly and James R. Donnelly, Partners as Casserly & Donnelly; John J. Biebighauser; George W. McGuiggan and Neil Kelliher, Partners as McGuiggan & Kelliher; The Chapman-Drake Company, William Salisbury; Abraham Harris and Mark Harris, Partners as Harris Brothers; The Todd Pulley and Shafting Works, Earnest D. Babcock; W. P. Riley, Doing Business as Valley Iron Works; The Allington & Curtis Manufacturing Company; W. C. Armstrong, James J. Armstrong, and Bernard B. Armstrong, Partners as Armstrong Brothers; Isaac B. Davis and John O. Davis, Partners as J. B. Davis & Son; Hanford J. Perkins and Willis J. Perkins, Partners as Perkins & Company; W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah C. Nicols, Emma N. Pilkington, Henry Nicols, and Jessie A. Gregg, Partners as Nicols & Dean; The Canton Steam Pump Company; A. N. Nelson, Treasurer of Ramsey County, Minnesota; W. E. Burton, Treasurer of Ramsey County, Minnesota; F. A. Renz, Treasurer of Ramsey County, Minnesota; J. F. Wilcox, Frank Morand, The Gordon Steam Pump Company, William G. Mulligan, The St. Paul Foundry Company, Dan. Baker, Daniel A. J. Baker, George P. Clark, Levi Houston; F. E. Elmund and Gus Carlson, Partners as Elmund & Carlson; The Woolson Spice Company; Richards Gordon and Paul D. Ferguson, Partners as Gordon & Ferguson; Andrew Schoch, The J. C. Hanley Lime Company; Robert Pearce and Charles P. Price, Partners as Pearce & Company; William Cunningham; Daniel B. Fisk, Daniel M. Fisk, and John E. L. Frasher, Partners as D. B. Fisk & Company; The German-American Hail Insurance Company, Andrew Johnson, James Davenport, Jr., William Poppenberger, F. C. Nelson, The Vulcan Iron Works; F. M. Schutte, Doing Business as Schutte & Company; The Northwestern Fuel Company; Geo. W. Griggs and Emery G. Griggs, Partners as Grigg Brothers; Daniel M. Finlayson, Daniel H. Moon, and Edgar C. Long, Partners as D. M. Finlayson & Company; William Rodger and John D. Roberts, Partners as Rodger & Company; Eugene R. Ide and James R. Thompson, Partners as Ide & Thompson; J. B. Gazett; The St. Paul Trust Company, as Assignee of the Estate of Henry Marine and Peter Zimmer, Partners as Marine & Zimmer; Thomas Jefferson; P. J. Bowlin, Doing Business as P. J. Bowlin & Company; The Cleveland Brown & Company, The H. P. Rugg & Company, James L. Lovering, Henry S. Fairchild, Eleonor Tatum, Hannah Tatum, John B.

390 Rossman, William R. Murray, Charles P. Barstow, Clarence E. Stone, Mary C. Tatum, Amy T. Hilles, and Elizabeth T. Long, Defendants.

This cause came on to be heard upon the pleadings and proofs before the court at the June term thereof, and after hearing the counsel for the respective parties, and upon due consideration by the court it is—

Ordered, adjudged and decreed that said complainants take nothing by this action, and that defendants have and recover of said complainants their costs and disbursements in this cause, to be taxed by the clerk, and that they have execution therefor.

JNO. A. WILLIAMS,
U. S. Dist. Judge.

Costs taxed at $477.59.

Indorsed: Decree for defendants. Filed Nov. 6th, 1893. Oscar B. Hillis, clerk. Approved as to form. C. W. Bunn.

Assignment of Errors.

Circuit Court of the United States, District of Minnesota, Third Division.

ELIZABETH WETZEL *et als.*, Plaintiffs and Appellants,
vs.
MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Appellees.

Now comes the said plaintiffs and appellants above named and say, that in the record and proceedings in this cause there are manifest errors and they assign the following errors, to wit:

1st. The court erred in not ruling and adjudging and decreeing that the sale of the land warrant by the widow and heirs of George W. Remsen was not absolutely null and void as alleged in the bill of complaint.

2nd. The court erred in not adjudging and decreeing that the sale of said land warrant was at least absolutely null and void as to the children of said Geo. W. Remsen who were minors at the date of said sale.

3rd. The court erred in not adjudging and decreeing that the sale and assignment of said land warrant was at least absolutely null and void as to the minor children of said George W. Remsen for and on behalf of whom his widow executed the said assignment.

391 4th. The court erred in not adjudging and decreeing that said minor children referred to in the last assignment were under no obligation to disaffirm said sale and assignment after coming of age.

5th. The court erred in not adjudging and decreeing that the sale and assignment of said land warrant was a conveyance of real estate.

6th. The court erred in not adjudging and decreeing that the

vendee of said land warrant as well as purchasers under him, including the defendants in this case, were trustees of the legal title to said lands or some part of them or interest therein and bound in equity to convey to the plaintiffs or part of them as prayed and alleged in the bill of complaint.

7th. The court erred in not adjudging and decreeing that the plaintiffs or some of them were the equitable owners of the real estate described in the bill or some part thereof or interest therein.

8th. The court erred in not adjudging and decreeing that the defendants in this case were purchasers with full notice and the equities of the plaintiffs and each of them.

9th. The court erred in adjudging and decreeing that the plaintiffs or any of them were guilty of such delay or laches as to bar their right to recover the premises described in the bill in this suit.

10th. The court erred in adjudging and decreeing that the complainants take nothing in said suit.

11th. The court erred in adjudging and decreeing that the bill of complaint in this suit be dismissed.

Dated May 3rd, 1894.

WM. C. MAYNE,
BUNN & HADLEY,
Plaintiffs' Attorneys.
C. W. BUNN, *Of Counsel.*

(Indorsed:) Assignment of errors. Filed May 3rd, 1894. Oscar B. Hillis, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the United States circuit court of appeals for the eighth circuit, that the foregoing, consisting of 400 392 pages, numbered consecutively from one to 400 inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging, the original citation, together with the proof of service thereof.

Seal U. S. Circuit Court, Third Division, District of Minnesota.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Saint Paul, in the District of Minnesota, this 7th day of June, A. D. 1894.

OSCAR B. HILLIS, *Clerk.*

Filed June 29, 1894.

JOHN D. JORDAN, *Clerk.*

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL *et als.*, Complainants and Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Respondents.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause that on the appeal taken herein by the complainants herein to this court from the decree of the United States circuit court for the district of Minnesota, third division, the answer interposed in this case by Bridget Egan *et als.*, may and shall be used and considered by this court on such appeal as the answer of all the defendants herein; and further, that the decision of this court upon such appeal shall have the same force and effect as if all the various answers interposed herein were before this court on such appeal.

Dated May 10, 1894.

WM. C. MAYNE,
BUNN & HADLEY,
Solicitors for Complainants and Appellants.
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Defendants and Respondents.

Original. United States circuit court of appeals for the eighth circuit. Elizabeth Wetzel *et als. vs.* The Minnesota Transfer Railway Company *et als.* Stipulation. No. 496. Elizabeth Wetzel *et et al.*, appellants, *vs.* Minnesota Railway Transfer Co. *et al.* Stipulation as to answer of Bridget Egan *et al.* Filed June 29, 1894. John D. Jordan, clerk.

393 And on the twenty-ninth day of June, A. D. 1894, an appearance of counsel for appellants was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

ELIZABETH WETZEL *et al.*, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER CO. *et al.* } No. 496.

The clerk will enter *my* appearance as counsel for the appellants.

C. W. BUNN.
WM. ELY BRAMHALL.

Endorsed: "U. S. circuit court of appeals, eighth circuit. May term, 1894. No. 496. Elizabeth Wetzel *et al.*, appellants, *vs.* Minnesota Railway Transfer Co. *et al.* Appearance. Filed Jun- 29, 1894. John D. Jordan, clerk. C. W. Bunn, Wm. Ely Bramhall, St. Paul, Minn., counsel for appellants."

And on the twenty-ninth day of June, A. D. 1894, there was filed in the clerk's office of said circuit court of appeals a stipulation as to use of original exhibits on appeal in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL *et al.*, Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Respondents.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause that none of the exhibits nor any part thereof introduced in evidence upon the trial of this cause
394 need be printed in the copies of the record for use in this court, and that this cause in this court may be heard and determined upon the printed copies of all of the balance of the record on the appeal to this court from the decree appealed from, which was entered in the United States circuit court for the district of Minnesota, third division, on November 6, 1893, and upon the original exhibits herein, to be certified to this court as a part of the record herein from such circuit court, with the same force and effect as if copies of such exhibits had been made a part of such record and copies thereof had been printed in the copies of the record for use in this court.

Dated May 3, 1894.

W. C. MAYNE,
BUNN & HADLEY,
Solicitors for Appellants.
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Respondents.

Endorsed: "No. 496. Elizabeth Wetzel *et al.*, appellants, *vs.* Minnesota R'y Transfer Co. *et al.* Stipulation as to use of original exhibits in circuit court of appeals. Filed Jun- 29, 1894. John D. Jordon clerk."

And on the thirteenth day of July, A. D. 1894, an appearance of Mr. W. C. Mayne as counsel for appellants was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

ELIZABETH WETZEL *et al.*, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER COMPANY. } No. 496.

The clerk will enter my appearance as counsel for the appellants.
WILLIAM C. MAYNE.

395 Endorsed: "U. S. circuit court of appeals, eighth circuit, May term, 1894. No. 496. Elizabeth Wetzel *et al.*, appellants, *vs.* The Minnesota Railway Transfer Company. Appearance. Filed Jul- 13, 1894. John D. Jordan, clerk. William C. Mayne, law offices, 926 Walnut St., Philadelphia, U. S. A., counsel for appellants."

And on the eleventh day of October, A. D. 1894, an appearance of counsel for appellees was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

ELIZABETH WETZEL *et al.*, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER CO. *et al.* } No. 496.

The clerk will enter *my* appearance as counsel for the appellees.

C. K. DAVIS.
F. B. KELLOGG.
C. A. SEVERANCE.

Endorsed: "U. S. circuit court of appeals, eighth circuit, May term, 1894. No. 496. Elizabeth Wetzel *et al.*, appellants, *vs.* Minnesota Railway Transfer Co. *et al.* Appearance. Filed Sep. 11, 1894. John D. Jordan, clerk. C. K. Davis, F. B. Kellogg, & C. A. Severance, counsel for appellees."

And on the twenty-third day of October, A. D. 1894, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause in the words and figures following, to wit:

396 United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

TUESDAY, *October* 23, 1894.

ELIZABETH WETZEL *et al.*, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Appellees. } No. 496.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been heretofore passed to this day was called for hearing and argument was commenced by Mr. C. W. Bunn on behalf of appellants, continued by Mr. C. K. Davis for appellees, and concluded by Mr. W. C. Mayne in behalf of appellants.

Thereupon this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

And on the tenth day of December, A. D. 1894, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

397 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1894.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, MAGGIE L. BECKMAN, JOHN WESLEY REMSEN, MARY J. REMSEN, GEORGE W. REMSEN, CLARA B. REMSEN, and MABEL REMSEN, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Appellees.

No. 496. Appeal from the Circuit Court of the United States for the District of Minnesota.

Mr. C. W. Bunn and Mr. William C. Mayne (Mr. William E. Bramhall on brief) for the appellants.

Mr. C. K. Davis (Mr. F. B. Kellogg and Mr. C. A. Severance were with him on brief) for the appellees.

Before Caldwell, Sanborn, and Thayer, circuit judges.

Statement.

This was a suit by the appellants, who were complainants in the circuit court, to establish their title to an undivided interest in a certain tract of land situated in Ramsey county, Minnesota, to wit, the southwest quarter of section twenty-eight, township twenty-nine north, range twenty-three west, which was patented by the United States to Nathan C. D. Taylor on the 20th of March, 1850, as assignee of Elizabeth Remsen, in her own right, and as guardian of the minor heirs of George W. Remsen, deceased. The facts out of which the controversy arose may be stated with substantial accuracy, as follows:

George W. Remsen was a soldier in the Mexican war, and by virtue of his enlistment and service, he became entitled, under the provisions of the ninth section of an act of Congress approved on February 11, 1847, to one hundred and sixty acres of land.
398 9 Statutes, p. 123, 125. Said Remsen died in the service in the month of October, 1847, and under the provisions of said act, his right to said land inured to the benefit of his surviving wife and children. On September 30, 1848, a warrant was duly issued to Elizabeth Remsen, widow of said George W. Remsen, and to Harriet A., Mary Ann, John W., Elizabeth and George W. A. Remsen, children and heirs-at-law of said George W. Remsen, deceased, who was described in the warrant as "late a private in Company K, Third regiment United States infantry." At the time of the issuance of said warrant all of said children were minors, Harriet A. Remsen, the oldest child, being then about seventeen years of age. Section nine of the act of February 11, 1847, aforesaid, provided in

substance that in the event of the issuance of a land warrant under said act to the minor children of a deceased soldier, " then the legally constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, *upon being duly authorized by the orphans' or other court having probate jurisdiction*, have power to sell and dispose of such certificate or warrant for the benefit of those interested."

Elizabeth Remsen qualified as guardian of all the minors aforesaid except Harriet A. the oldest, before the orphans' court of the county of Philadelphia, State of Pennsylvania, on October 6, 1848. Subsequently and on the 11th of October, 1848, she sold and assigned the land warrant in question to Nathan C. D. Taylor, who located the same on the land now in controversy, and received a patent therefor as heretofore stated. The assignment of said land warrant was executed by said Elizabeth Remsen, the mother, in her own behalf, " and as guardian of the minor children of George W. Remsen, deceased ;" but she appears to have obtained no order from the orphans' court aforesaid authorizing her to sell her children's interest therein. The assignment of the land warrant was also executed by Harriet A. Remsen, the oldest daughter, who had previously become the wife of Jacob Heyer, but her husband did not join with her in the execution of the assignment.

By numerous mesne conveyances covering a period of many years, the title to the aforesaid tract of land thus acquired by Nathan C. D. Taylor has now become vested in very many persons who are in possession of different parcels of the land and who were made parties defendant to the bill of complaint.

All of the aforesaid minor children of George W. Remsen, deceased, lived to attain their majority and for some years thereafter. The youngest of them, George W. A. Remsen, attained his majority as early as the year 1863, the others, except Harriet A. in the years 1856, 1858 and 1861.

Elizabeth Wetzel, one of the appellants, is the former wife of George W. Remsen, who died in October, 1847, she having married Paul Wetzel since the death of her first husband. Harriet A. Van Zant, another of the appellants, is the oldest daughter of said George W. Remsen, who joined with her mother in the sale and assignment of the land warrant as heretofore stated. John Wesley Rem-
399 sen, also one of the appellants, is a son of George W. Remsen, deceased. The other children of said deceased heretofore named, to wit: Mary Ann, Elizabeth and George W. A. Remsen, appear to be dead, and their interests are represented in the present proceeding by the other appellants, to wit: by Emma F. Hergesheimer and Maggie L. Beckman, who were the daughters of Mary Ann Remsen, and by Mary J. Remsen and her children, George W., Clara B. and Mabel Remsen, who are respectively the widow and lineal descendants of George W. A. Remsen, now deceased. Elizabeth Remsen appears to have died leaving no lineal descendants.

It was claimed in behalf of the appellants that the sale and assignment of the aforesaid land warrant was utterly void as to the

interests of all the minor children of George W. Remsen other than Harriet A., who joined in the assignment of the same, because the assignment made by their mother and guardian was not authorized by any order or decree of the orphans' court of the county of Philadelphia, as the act of Congress required. They therefore, prayed that the title of such minor heirs to an undivided interest in the tract of land aforesaid might be established, and that the defendants holding under the patent issued to Nathan C. D. Taylor might be adjudged to hold the legal title so acquired in trust for the appellants, and that they be compelled to convey the legal title to the appellants. On the final hearing the proceeding was dismissed on the ground of laches.

THAYER, J., after stating the case as above, delivered the opinion of the court:

The bill of complaint in this suit appears to have been filed in the circuit court of the United States for the district of Minnesota, on the 28th day of May, 1892, nearly forty-four years after the land warrant which was issued to the widow of George W. Remsen and to his minor children was sold and assigned by the widow, acting for herself and as guardian of said minors, to Nathan C. D. Taylor, under whom the defendants now claim. When the suit was instituted, more than forty-two years had come and gone since Taylor had located the warrant on the lands in controversy and had obtained a patent therefor from the United States, and nearly thirty years had elapsed since the youngest minor child of George W. Remsen had attained his majority. In the meantime, two large cities, Minneapolis and St. Paul, had grown up in the immediate vicinity of the place where Taylor had located the warrant; for a number of years prior to the commencement of the suit, the property in question was within the outboundaries of one of these cities; it had been to a large extent subdivided into lots and blocks; it had become of immense value and had been sold in separate parcels to numerous purchasers who had made extensive improvements thereon. Some idea may be formed of the extent to which the property in question has changed hands, and of the number of persons whose interests are injuriously affected by the present litigation, from the admitted fact that there are more than
400 1,200 entries in the abstract of title, which counsel for the complainants found it necessary to procure before the bill of complaint in the present suit could be intelligently drawn. These general facts, with respect to which there is no dispute, are sufficient, we think, to justify us in ignoring all other questions and in directing our attention primarily, to the important inquiry whether, in view of the long period that has elapsed since the wrong complained of was committed, and since the minor heirs of George W. Remsen attained their majority, they and their descendants have shown such reasonable diligence as will serve to excuse the long delay in asserting their rights, and entitle them to relief in a court of equity.

The doctrine of laches has so often been applied by the Supreme Court of the United States and by this court, in cases bearing a

strong likeness to the one at bar, that we deem it unnecessary in this opinion to enter into a general discussion of the subject. It is now well settled, that, while the defence of laches is ordinarily available in equity in those cases where the plea of the statute of limitations would be effectual at law, yet in many instances, depending on a variety of circumstances, laches will be regarded as a good defense even where the plea of the statute would not be available at law. The plea of laches does not always depend for its support upon mere lapse of time, but upon the manifest inequity of permitting the claim to be enforced in view of some change in the condition of the property or in the relations of the parties to the controversy. It is also a well established rule that when a suitor applies to a court of chancery for relief, for any considerable length of time after the wrong complained of was committed, it is incumbent on him to show, both by averment and proof, some sufficient excuse to justify the delay. This latter rule requiring a suitor to plead and prove some adequate excuse for his silence and inaction in every instance where there has been an apparent want of diligence, is applied and enforced with great strictness in those cases where a person seeks to fasten upon another a constructive trust with respect to personal or real property, and in those cases as well, where the property in controversy has rapidly appreciated in value, or has been improved by those in possession, or when the rights of numerous third parties have intervened and attached. These principles have been recognized and applied in such a great variety of cases that it is hardly necessary to do more at present than to refer to a few of the leading authorities where they have been clearly stated and rigidly enforced. *Badger v. Badger*, 2 Wall. 87, 95; *Godden v. Kimmell*, 99 U. S. 201; *Galliher v. Cadwell*, 145 U. S. 368; *Felix v. Patrick*, 145 U. S. 317; *Naddo v. Bardon*, 4 U. S. App. 642; *id.* 2 C. C. A. 335; *Lemoine v. Dunklin County*, 10 U. S. App. 227: *id.* 2 C. C. A. 343; *St. Paul, Stillwater & Taylor's Falls Railroad v. Sage*, 4 U. S. App. 160; *id.* 1 C. C. A. 256; *Ashhurt's Appeal*, 60 Pa. St. 290.

In the case at bar, the complainants have attempted, in accordance with the foregoing rule, to show by their bill and their proofs that their long silence and inaction, extending over a period of twenty-nine years after the youngest child of the deceased
401 soldier attained his majority, was due to causes beyond their control, which should be accepted as a valid excuse by a court of equity. With reference to the excuse so pleaded, it may be said that the plaintiffs allege in substance that none of the minors, except Harriet A. Remsen, who joined with her mother in the assignment of the land warrant, had any intimation that the warrant had been issued or that the same had been sold until some time in the latter part of the year 1889, and that they did not become possessed of all of the facts stated in the bill until the month of August, 1891. It is further said in their behalf, that they were persons occupying a humble station in life, and that they were, to a certain extent, illiterate and inexperienced. It is not claimed, however, that any fraud was practiced upon the plaintiffs, or that knowledge of the issuance and sale of the land warrant was intentionally concealed from them

with a view of preventing them from asserting their rights, either before or after they attained their majority. The case rests, therefore, so far as any excuse for the delay in bringing suit is concerned, solely upon the plea of long-continued ignorance, unaffected by any other extenuating circumstances. Is this excuse sufficient to give them a standing in a court of equity upon the state of facts disclosed by this record? Proceeding to consider this question, we may be permitted to intimate a serious doubt whether all or any of the minor heirs of George W. Remsen, who are represented in this action, were, in fact, ignorant of the issuance, sale and assignment of the land warrant by their mother and older sister when the sale was made. At that time, Mary Ann Remsen, the mother of two of the plaintiffs, was about fourteen years of age; John Wesley Remsen, one of the present plaintiffs, was a boy at least eleven years old; they were then living with their mother, and the family appears to have been possessed of limited means and to have been in straitened circumstances. Under these conditions, it is possible, of course, that the sale of the warrant and receipt of the purchase-money was only known to the mother and oldest daughter, but it is by no means probable that such was the fact. It is more reasonable, we think, to believe that a transaction of such importance to people in their then condition was frequently discussed or mentioned in the family circle, and that it was well known to all of the children who were then capable of understanding facts or events of that nature. At this late day it is easy for those of the children who are still living to say, with much apparent sincerity, that they had no knowledge of the issuance and sale of the warrant, while it is practically impossible for the defendants to disprove such assertions. For these reasons, we think that the testimony tending to show ignorance of the transaction in question, as an excuse for the long years of delay, should be received and acted upon by a chancellor with great caution, even if it is not entirely discredited. There are some facts, however, of which the plaintiffs do not pretend to have been ignorant. It is admitted, or, if not admitted, it is apparent from the testimony, that all of the minor heirs well knew that their father was a soldier in the Mexican war; that he died in the service and that their mother was in receipt of a pension on account of
402 such service; they were all affected, at least when they attained their majority, with knowledge of the law which granted to them and to their mother one hundred and sixty acres of land and entitled them to receive a warrant therefor from the Government. This latter fact is one, we think, of which the plaintiffs cannot be permitted to plead ignorance; it is also a fact which should have inspired some affirmative action on their part, with a view of ascertaining their rights, within a reasonable period after they respectively became of full age and were entitled to receive their inheritance. Assuming that they were each utterly ignorant until they became of full age of the previous issuance and sale of the land warrant, yet a simple inquiry addressed to the Land Department could not have failed to have made them acquainted, more than thirty years ago, with all of the facts attending the

issuance and sale of the warrant, which they have since learned. At that time, say from 1856 to 1863, during which period the several minors became of age, the land in controversy, which is now worth nearly, if not quite, a million dollars, was then worth not to exceed fifteen hundred dollars, and but few conveyances affecting the same had been made. These are facts which a court of equity cannot overlook in determining whether the plaintiffs have exercised such reasonable diligence as they were required to exercise. It must be presumed that they were acquainted with the law which, on a state of facts that was well known to them, entitled them to receive a certain gratuity from the Government on account of their father's enlistment and services; they must also be presumed to have known whatever would have been discovered, had they made such use of the knowledge which they are presumed to have possessed, as other persons of fair intelligence would have made of it. Stating the proposition in a different form, it may be said that they cannot plead ignorance of the rights now asserted, as an excuse for long years of delay, when it is evident that such ignorance was due to their own neglect in failing to take any steps to secure a land warrant which they knew they were entitled to if it had not already been issued. While it is true that ignorance of one's rights will frequently serve as an excuse in a court of equity for not bringing a suit to enforce them, yet it will never have that effect where such ignorance is fairly attributable to negligence, or to a party's failure to make such inquiries with respect to his rights as, with the information at his command, he ought to have made.

It has been suggested by counsel, that it is a harsh rule which imposes on the plaintiffs the duty of knowing the law and of thereby knowing, many years ago, that they were entitled to a land warrant; it is also suggested that the old maxim, "Ignorance of the law excuses no one," is not applicable to the present case. In almost the same breath, however, it is confidently asserted that all of the numerous persons who, for the past thirty or forty years have bought portions of the land now in controversy, some of whom were doubtless as ignorant and inexperienced as these plaintiffs, are each and all of them affected with knowledge of the invalidity of their respective titles, because the records do not affirmatively show
403 that the sale of the land warrant under which they derived title, was made pursuant to an order of the orphans' court, as the act of Congress required. We confess our inability to perceive that the rule in question is any less harsh or oppressive in the latter case than in the former. If it can be invoked by the plaintiffs to affect the defendants with notice of the flaw in their title, then, with equal justice, it can be invoked by the defendants for the purpose of showing that the plaintiffs were many years ago affected with such knowledge of the law and facts as should have put them upon inquiry. For the foregoing reasons, we have felt constrained to hold that the plaintiffs failed to show such diligence in ascertaining their alleged rights as entitled them to relief in a court of chancery. It is as much the duty of a suitor in equity to be diligent in discovering his rights as it is to be prompt in asserting them after

they become known. In the present case, nothing appears to have been done by the minors, for more than thirty years after they became of full age, with a view of finding out whether a land warrant had ever been issued by the Government, although they are presumed to have had knowledge during all of that period that they were justly entitled to one. Such conduct on their part either amounts to gross laches or it creates a strong presumption that they were fully aware of the issuance and sale of the land warrant in question, and for the purposes of this case it matters not which of these views ought to be adopted.

There is another potent reason why the decree dismissing the bill of complaint ought not to be disturbed. It has already been stated that in applying the doctrine of laches, courts of equity are not influenced solely by lapse of time, but by other considerations as well, which render it obviously inequitable to grant the relief prayed for. They have a limited discretion in determining under what circumstances they will afford redress, and the hand of the chancellor will always be stayed when to act would be to do an injustice. *Galliher v. Cadwell* (*supra*); *Felix v. Patrick* (*supra*); *McKinney v. Bode*, 33 Minnesota, 450; *Murphy v. Burke*, 47 Minnesota, 99. In the present case there has not only been long, and as we think, inexcusable delay, but it would be grossly unjust to grant the relief which these plaintiffs seek to obtain. More than forty years ago the widow of George W. Remsen sold the land warrant in question for its full value, and doubtless used the proceeds for the support and maintenance of her minor children; if she sold it without having obtained the requisite authority from the orphans' court, her action was due solely to a mistake of law; the testimony does not raise the slightest suspicion of fraud or attempted concealment either on her part or on the part of the purchaser. Through the foresight of the purchaser of the warrant it was located in the vicinity of two frontier villages, which have since become large cities, and the land has become of immense value; hundreds of people who were at least as innocent as these plaintiffs, have since expended their means in purchasing portions of the property and in improving it in divers and sundry ways. The plaintiffs live a thousand miles dis-
404 tant from the premises; it was not through any foresight of theirs that the fortunate selection of the land was made, and they have never contributed a dollar towards its improvement. It only requires a glance at these facts and at this situation to warrant us in saying that no greater wrong could be perpetrated under the guise of administering justice than by granting the relief prayed for in the present suit.

The decree of the circuit court dismissing the bill is therefore *affirmed.*

Filed December 10, 1894.

405 And on the tenth day of December, A. D. 1894, in the record of the proceedings of said circuit court of appeals is a decree in said cause in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1894.

MONDAY, *December* 10, 1894.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. Hergesheimer, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Appellees.
No. 496.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs, and that the appellees recover against Elizabeth Wetzel, Harriet A. Van Zant, Emma F. Hergesheimer, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, appellants, the sum of twenty dollars for their costs herein and have execution therefor.

December 10, 1894.

And on the eighteenth day of November, A. D. 1895, there was filed in the clerk's office of said circuit court of appeals a petition for and order allowing appeal in the words and figures following, to wit:

406 United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants and Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Respondents.

The above-named complainants, Elizabeth Wetzel, Harriet A. Van Zant, Emma F. Hergesheimer, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara E. Remsen, and Mabel Remsen, conceiving themselves aggrieved by the decree of affirmance entered on December 10, 1894, in the above-entitled proceeding, do hereby appeal from said decree to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly

authenticated, may be sent to the Supreme Court of the United States.

St. Paul, November 16th, 1895.

WM. C. MAYNE,
926 *Walnut St., Philadelphia, Pennsylvania;*
WM. ELY BRAMHALL,
515 *New York Life Bldg., St. Paul, Minnesota;*
CHAS. W. BUNN,
Northern Pacific Bldg., St. Paul, Minnesota,
Solicitors for Complainants and Appellants.
CHARLES W. BUNN,
Northern Pacific Bldg., St. Paul, Minn., of Counsel.

And now, to wit, on November 16th, A. D. 1895, it is ordered that the appeal be allowed as prayed for herein.

WALTER H. SANBORN,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

407 Endorsed: "No. 496, original. United States circuit court of appeals for the eighth circuit. Elizabeth Wetzel *et als. vs.* The Minnesota Transfer Railway Company *et als.* Petition for appeal and order allowing same. Filed Nov. 18, 1895. John D. Jordan, clerk. Due personal service of within by copy admitted on us this 16th day of November, A. D. 1895. Davis, Kellogg & Severance, attorneys for resp'd'ts."

And on the eighteenth day of November, A. D. 1895, there was filed in the clerk's office of said circuit court of appeals a bond on appeal in the words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants and Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Respondents.

Whereas lately, at the December, 1894, term of the United States circuit court of appeals for the eighth circuit, in a suit pending in said court upon appeal from the circuit court in and for the district of Minnesota, third division, between said complainants, as complainants and appellants, and said defendants, as defendants and respondents, a decree was rendered and entered on December 10, 1894, against said complainants and appellants, in and by which it was ordered, adjudged, and decreed that the decree of said circuit court that said complainants take nothing by this action be affirmed, and said complainants and appellants having obtained an allowance of the said court of appeals of an appeal to reverse the decree

in the aforesaid suit, and a citation directed to said defendants and each of them, citing and admonishing them and each of them
408 to appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the date of said citation:

Now, therefore, the American Surety Company of New York, for itself, its successors and assigns, does undertake, promise, and agree to and with said defendants, their successors and assigns and their heirs, executors, and administrators, that said complainants shall pay all damages and costs that may be awarded against them on said appeal, not exceeding the sum of five hundred dollars. Now, the condition of the above obligation is such that if said complainants and appellants shall prosecute said appeal to effect and answer all damages and costs if they shall fail to make said appeal good, then this obligation shall be void; otherwise the same should be and remain in full force and effect.

In witness whereof the American Surety Company of New York has caused these presents to be signed by its resident vice-president and resident assistant secretary at St. Paul, Minnesota, and its corporate seal to be hereunto affixed on the 15th day of November, A. D. 1895.

THE AMERICAN SURETY COMPANY
OF NEW YORK,
By DANIEL D. MERRILL,
[SEAL.] *Resident Vice-President, and*
GEORGE B. EDGERTON,
Resident Assistant Secretary.

In the presence of—
GEORGE W. HUNT.
F. H. SLOCUM.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 15th day of November, A. D. 1895, before me personally appeared Daniel D. Merrill and George B. Edgerton, to me personally known, who, being by me duly sworn, did each upon his oath for himself say that he, said Daniel D. Merrill, is the resident vice-president of the American Surety Company of New York, and that he, said George B. Edgerton, is the resident assistant secretary of said American Surety Company of New York, a corporation; that
409 the seal annexed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and the said Daniel D. Merrill and George B. Edgerton acknowledged said instrument to be the free act and deed of said corporation.

T. H. PRIDHAM,
[SEAL.] *Notary Public, Ramsey County, Minnesota.*

It is hereby stipulated that the foregoing undertaking may be allowed and approved in the above-entitled cause upon the appeal

thereof to the Supreme Court of the United States as and in the place of a bond and with the same force and effect as if the bond provided for in the rules of the Supreme Court of the United States had been given in this action upon such appeal.

Dated November 16th, A. D. 1895.

DAVIS, KELLOGG & SEVERANCE,
Attorneys for said Defendants and Respondents.

The foregoing undertaking, with the surety thereon, is hereby approved and allowed.

Dated November 16th, A. D. 1895.

WALTER H. SANBORN,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed: "No. 496, original. United States circuit court of appeals for the eighth circuit. Elizabeth Wetzel *et als. vs.* The Minnesota Transfer Railway Company *et als.* Appeal bond. Filed Nov. 18, 1895. John D. Jordan, clerk. Due personal service of within by copy admitted on us this 16th day of November, A. D. 1895. Davis, Kellogg & Severance, attorneys for resp'd'ts."

410 And on the eighteenth day of November, A. D. 1895, there was filed in the clerk's office of said circuit court of appeals an assignment of errors in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants and Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Respondents.

Assignment of Errors.

And now comes the said complainants and appellants above named, by their attorneys herein, and say that in the record and proceedings in this case there are manifest errors, and they assign the following errors, to wit:

1st. The said court erred in not ruling and adjudging and decreeing that the sale of the land warrant by the widow and heirs of George W. Remsen was absolutely null and void, as alleged in the bill of complaint.

2nd. The said court erred in not adjudging and decreeing that the sale of said land warrant was at least absolutely null and void as — the children of said George W. Remsen who were minors at the date of sale.

3rd. The court erred in not adjudging and decreeing that the sale

and assignment of said land warrant was at least absolutely null and void as to the minor children of said George W. Remsen, for and on behalf of whom his widow executed the said assignment.

4th. The court erred in not adjudging and decreeing that said minor children referred to in the last assignment were under no obligation to disaffirm said sale and assignment after becoming of age.

5th. The court erred in not adjudging and decreeing that
411 the sale and assignment of said land warrant was a conveyance of real estate.

6th. The court erred in not adjudging and decreeing that the vendee of said land warrant as well as purchasers under him, including the defendants in this case, were trustees of the legal title to said lands or some part of them or interest therein and bound in equity to convey to the plaintiffs or part of them as prayed and alleged in the bill of complaint.

7th. The court erred in not adjudging and decreeing that the plaintiffs or some of them were the equitable owners of the real estate described in the bill or some part thereof or interest therein.

8th. The court erred in not adjudging and decreeing that the defendants in this case were purchasers with full notice of all the equities of the complainants and each of them.

9th. The court erred in adjudging and decreeing that the complainants or any of them were guilty of such delay or laches as to bar their right to recover the premises described in the bill in this suit.

10th. The court erred in adjudging and decreeing that the bill of complaint in this suit be dismissed.

12th. The court erred in adjudging and decreeing that the decree entered herein in the circuit court of the United States in and for the district of Minnesota, third division, be affirmed.

Wherefore the said complainants pray that the decree of the circuit court of the United States in and for the district of Minnesota, third division, be reversed, and that said circuit court be ordered to enter a decree herein in favor of the complainants, as prayed for in their bill of complaint herein.

Dated November 16th, A. D. 1895.

WM. C. MAYNE,
WM. ELY BRAMHALL,
Plaintiffs' Solicitors.

C. W. BUNN, *Of Counsel.*

412 Due personal service of within by copy admitted on us this 16th day of November, A. D. 1995.

DAVIS, KELLOGG & SEVERANCE,
Attorneys for Resp'd'ts.

Endorsed: "No. 496, original. United States circuit court of appeals for the eighth circuit. Elizabeth Wetzel *et als. vs.* The Minnesota Transfer Railway Company *et als.* Assignment of errors. Filed Nov. 18, 1895. John D. Jordan, clerk."

And on the eighteenth day of November, A. D. 1895, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which, with admission of service endorsed thereon, is hereto attached and herewith returned.

413 United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants and Appellants,

vs.

THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Respondents.

UNITED STATES OF AMERICA, *ss:*

To the Minnesota Transfer Railway Company and all of the other defendants in the above-entitled suit, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the date of this citation, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein the above-named complainants, Elizabeth Wetzel, Harriet A. Van Zant, Emma F. Hergesheimer, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, are appellants and The Minnesota Transfer Railway Company and the other defendants in the above-entitled suit are respondents, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 16th day of November, in the year of our
414 Lord one thousand eight hundred and ninety-five.

WALTER H. SANBORN,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] No. 496, original. United States circuit court of appeals for the eighth circuit. Elizabeth Wetzel *et als. vs.* The Minnesota Transfer Railway Company *et als.* Citation on appeal. Filed Nov. 18, 1895. John D. Jordan, clerk. Bramhall & Taylor, attorneys and counselors, 52 Gilfillan building, St. Paul, Minn.

Due personal service of within by copy admitted on us this 16 day of November, A. D. 1895.

DAVIS, KELLOGG & SEVERANCE,
Attorneys for Resp'd'ts.

415 And on the twenty-first day of November, A. D. 1895, there was filed in the clerk's office of said circuit court of appeals a

stipulation as to original exhibits on appeal to the supreme court in said cause in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL *et als.*, Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Respondents.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause that the clerk of the above-entitled circuit court of appeals need not send to the United States Supreme Court a copy of any of the exhibits nor any part thereof introduced in evidence herein by either the complainants or defendants as a part of the record herein upon the appeal of the complainants herein from the decree of this court entered herein upon December 10, 1894, to the United States Supreme Court, but in place and in lieu of such copies the clerk shall certify and send to said Supreme Court, for use on such appeal, said original exhibits and all thereof for use upon the hearing of said appeal, with the same force and effect as if the copies thereof had been duly authenticated, certified, and returned to said Supreme Court by the clerk of this court as a part of the record of such appeal.

Dated November 18th, A. D. 1895.

WM. ELY BRAMHALL,
WM. C. MAYNE,
C. W. BUNN, *Solicitors for Complainants.*
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Defendants.

Endorsed: "No. 496. Elizabeth Wetzel *et al.*, appellants, *vs.* Minnesota Transfer Railway Company *et al.* Stipulation as to
416 original exhibits. Filed Nov. 21, 1895. John D. Jordan, clerk."

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing 416 pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of Elizabeth Wetzel *et al.*, appellants, *vs.* The Minnesota Railway Transfer Company *et al.*, appellee-, No. 496, December term, 1894, as the same remain upon the files and records of said United States circuit court of appeals.

I do further certify that on the eleventh day of February, A. D. 1895, there was issued out of the clerk's office of said circuit court of appeals a mandate, directed to the circuit court of the United

States for the district of Minnesota, in pursuance of the decree of said United States circuit court of appeals.

I further certify that the original citation in said cause, with the admission of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this fifth day of December, A. D. 1895.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed on cover: Case No. 16,123. U. S. circuit court of appeals, eighth circuit. Term No., 94. Elizabeth Wetzel *et al.*, appellants, *vs.* The Minnesota Railway Transfer Company *et al.* Filed January 2, 1896.